BEFORE
EDWIN H. BENN
ARBITRATOR

In the Matter of the Arbitration

between

COOK COUNTY SHERIFF / COUNTY OF COOK

and

AFSCME COUNCIL 31

CASE NO.: Arb. Ref. 10.116
(Interest Arbitration -
Police Officers
Police Sergeants
Correctional Sergeants
Correctional Lieutenants)

OPINION AND AWARD

APPEARANCES**:**

For the Joint Employers: James P. Daley, Esq.
David M. Novak, Esq.

For the Union: Stephen A. Yokich, Esq.

Date of Award: September 29, 2010

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I. BACKGROUND

This is an interest arbitration under authority of Section 14 of the Illinois Public Labor Relations Act ("IPLRA").[1] The purpose of this proceeding is to resolve remaining disputed issues between the Cook County Sheriff/County of Cook ("Employer", "Joint Employer(s)", "County" or "Sheriff") and AFSCME Council 31 and four local unions ("Union", "AFSCME" or "Council 31") and establish the terms and conditions for the new collective bargaining agreements ("Agreement(s)") between the parties.[2]

There are four bargaining units under separate contracts between the parties. All four contracts expired November 30, 2008. Three of the four contracts (covering the County Police Officers, Police Sergeants and Correctional Sergeants) were four year contracts commencing December 1, 2004. The contract covering Correctional Lieutenants commenced August 29, 2006.[3]

Upon my involvement in this matter and as set forth in an order dated February 26, 2010 (and as subsequently modified), a procedure was established for identifying disputed issues, submitting offers and revised offers, briefs and evidence in support of the parties' respective offers, mediation and hearing. This procedure caused much of the evidence and arguments to be presented before actual hearing and was utilized because of the large number

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[1] 5 ILCS 315/14. References to the transcripts of the hearings held in this matter will be "Tr. I at ___" for the August 10, 2010 proceedings; "Tr. II at ___" for the August 19, 2010 proceedings; and Tr. III at ___" for the August 27, 2010 proceedings.

The parties have waived the tri-partite arbitration panel called for in Section 14(b) of the IPLRA. Tr. I at 4-5.

[2] Aside from the Council 31 acting as the employees' bargaining representative, each group of employees under the Agreements has a separate local union — Local 2264 (Police Officers); Local 3958 (Police Sergeants); Local 3692 (Correctional Sergeants); and Local 2226 (Correctional Lieutenants).

[3] According to the Union, there are approximately 420 employees in the Police Officers bargaining unit; 190 employees in the Correctional Sergeants bargaining unit; 52 employees in the Police Sergeants bargaining unit; and 82 employees in the Correctional Lieutenants bargaining unit. Tr. I at 14.

of disputed issues between the parties. The procedure allowed for a reasonable management of the issues in dispute and an expediting of the final award. The parties have fulfilled the requirements under the scheduling procedure and voluminous briefs and evidence have been submitted and considered. Hearings were held on August 10, 19 and 27, 2010 on limited issues where further evidence and arguments were presented. Post-hearing briefs have also been filed. My task now is to resolve the impasses over the remaining issues in dispute and to finally set the terms for the new Agreements.

II. THE STATUTORY FACTORS

Section 14(h) of the IPLRA lists the following factors for consideration in interest arbitrations:

> (h) Where there is no agreement between the parties, ... the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:
>
> (1) The lawful authority of the employer.
>
> (2) Stipulations of the parties.
>
> (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
>
> (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
>
> (A) In public employment in comparable communities.
>
> (B) In private employment in comparable communities.
>
> (5) The average consumer prices for goods and services, commonly known as the cost of living.
>
> (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
>
> (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
>
> (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

III. MY AUTHORITY IN THIS PROCEEDING

The implications of my determinations in this award are quite significant impacting not only the employees covered by the four Agreements in this case, but setting a potential benchmark for other bargaining units in the County where contracts have not yet been reached. As the County points out:[4]

> These proceedings ... formally involve fewer than a thousand law enforcement employees in four bargaining units .... The Joint Employers reiterate that as a practical matter this interest arbitration is not so limited but will in all likelihood set the pattern for all or most of Cook County's bargained-for work-force of more than 18,000 employees.

However, while the impact of this case may be significant, in reality, my authority is limited.

First, this is a "final offer" interest arbitration (commonly referred to as "baseball" arbitrations). I am constrained by the IPLRA to select one of the parties' offers on each economic issue. Section 14(g) of the IPLRA provides that "... [a]s to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h)." I therefore have no ability to compromise economic issues. Final offer interest arbitration often puts arbitrators in the position of having to select an offer which is the least unreasonable.

Parties sometimes will agree that they are not bound by the final offer process and instead will give an arbitrator the authority to impose something other than one of the parties' final offers (also referred to as "hockey" arbitrations). Here, that is not the case. The parties did not give me that flexible

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4 County Pre-Hearing Brief at 3.

authority. As a matter of statute, I am therefore limited to selection of one party's offer on each economic issue.[5]

Second, interest arbitration is a *very* conservative process which does not impose terms and conditions on parties which may amount to "good ideas" from a party's (or even an arbitrator's) perspective. For a party in this case to achieve a changed or new provision in the Agreements — particularly for non-economic items — the burden is a heavy one. *See* my recent award in *City of Chicago and FOP*, *supra* at 6-7 [citation omitted, emphasis in original]:

> "The burden for changing an existing benefit rests with the party seeking the change ... [and] ... in order for me to impose a change, the burden is on the party seeking the change to demonstrate that the existing system is broken."
>
> As shown by the burdens placed on the parties to obtain changes to existing collective bargaining agreements, interest arbitration is a *very* conservative process. It would be presumptuous of me to believe that I could come up with a resolution satisfactory to the parties on these issues when the parties with their sophisticated negotiators could not do so, particularly after years of bargaining. For these issues, at best, the parties' proposed changes were good ideas from their perspectives. However, it is not the function of an interest arbitrator to make changes to terms of existing collective bargaining agreements based only

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[5] *See* my award in *City of Chicago and FOP Lodge No. 7* (April 16, 2010) ("*City of Chicago*") where the collective bargaining agreement provided that an interest arbitrator is not bound by the final offer provisions of the IPLRA, which allowed the selection of a wage rate different from the parties' final offers. That carving out of the IPLRA's final offer provision in the City of Chicago Police Contract was fully explained in another award by me establishing the terms of the Chicago Police 2003-2007 contract. *City of Chicago and FOP Lodge No. 7* (2005) at 24-25 [emphasis in original]:

> ... [U]nlike Section 14 proceedings under the IPLRA for resolving similar contract impasses in police and fire fighter bargaining units, ultimate resolution of the economic issues under this Agreement is not accomplished by a final offer or "baseball" arbitration — *i.e.*, where the arbitrator *only* has the authority to select one of the parties' economic offers and cannot craft something different from that of a specifically proposed final offer. In Section 28.3(B)(11) of the Agreement which establishes this impasse resolution procedure, the parties did not incorporate the final offer aspect of the IPLRA. Because the parties in this case have not structured their contractual impasse resolution procedure as a final offer one, and because neither party acquiesced in the other's final offer, I now have the authority to form the terms of the Agreement using the statutory factors found in Section 14(h) of the IPLRA, but with a result different from the parties' final economic offers. ...

See also, my award in *County of Rock Island and AFSCME Council 31*, S-MA-09-072 (April 7, 2010) at 4 where the parties agreed for that proceeding "... that I have the authority to fashion the wage increases I deem appropriate." The parties made no similar provision in this case. For economic issues, this is pure final offer interest arbitration, *i.e.,* we are playing "baseball".

on good ideas. That is why the party seeking the change must show that the existing condition is broken and therefore in need of change.

IV. THE ECONOMY AND INTEREST ARBITRATIONS

As the prior Agreements were expiring in November 2008 and in the period that followed, the economy crashed. In a series of awards issued beginning in 2009, I had to set wages and economic benefits for public sector employers and employees where revenue streams were severely reduced — in many cases, to a trickle — and the prospects for an economic recovery were bleak and unknown. *See State of Illinois Department of Central Management Services (Illinois State Police) and IBT Local 726*, S-MA-08-262 (January 27, 2009); *County of Boone and Boone County Sheriff and Illinois Fraternal Order of Police Labor Council*, S-MA-08-010 (March 23, 2009); *North Maine Fire Protection District and North Maine Firefighters Association* (September 8, 2009); *State of Illinois Department of Central Management Services (Department of Revenue Illinois Racing Board) and AFSCME*, Arb. No. 5637, 6263-0104-09, (372986) (September 14, 2009); *County of Rock Island and AFSCME Council 31, supra; City of Chicago and FOP Lodge No. 7*, *supra*.

As of this writing, the economic outlook and chances for recovery in the short-term are simply not good. When the Agreements expired in November 2008, according to the Bureau of Labor Statistics ("BLS"), the unemployment rate at the national level was 6.7%.[6] Currently, the national unemployment rate is 9.6%.[7] When the Agreements expired in November 2008, the unemployment rate at the State of Illinois level was 6.6%.[8] Currently, as announced in a press release dated September 23, 2010 by the Illinois Department of Em-

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6 http://www.bls.gov/news.release/archives/empsit_12052008.pdf.

7 http://www.bls.gov/news.release/archives/empsit_09032010.pdf.

8 http://lmi.ides.state.il.us/PDFs/2008-moaa.pdf at 1.

ployment Security ("IDES"), "[t]he August statewide unemployment rate is 9.9 percent and in single digits for the first August since 2008 ... [i]t has been 15 months since the rate was below 10 percent.[9] And turning to Cook County, when the Agreements expired in November 2008, the unemployment level in Cook County was 6.8%.[10] The latest data offered by IDES concerning the unemployment rate in Cook County is for August 2010 showing that rate to be 10.2%.[11] The "underemployment" rate — *i.e.,* those who, according to the BLS, are "[t]otal unemployed, plus all persons marginally attached to the labor force, plus total employed part time for economic reasons, as a percent of the civilian labor force plus all persons marginally attached to the labor force", is a staggering 16.7% at the national level.[12]

"... [T]he current recession has been characterized as the greatest recession experienced by this country since the Great Depression of 1929."[13] While there are signs of recovery, the economy as a whole paints a picture of a boxer struggling to get to his feet after a knockdown and wobbling in anticipation of the next onslaught. According to more recent observations about the economy since the issuance of *City of Chicago* in April 2010, not much has changed. Despite massive stimulus packages and other efforts by the federal government, the hoped-for recovery has not yet really appeared and jobs are not being

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9 Currently found at http://www.ides.state.il.us/economy/laus.pdf.

10 http://lmi.ides.state.il.us/PDFs/2008-moaa.pdf at 13.

11 http://lmi.ides.state.il.us/download/LAUS_CURRENT_COUNTY.pdf

12 http://www.bls.gov/news.release/archives/empsit_09032010.pdf at Table A-15.

13 Willis, "U.S. Recession Worst Since Great Depression, Revised Data Show", Bloomberg.com (August 1, 2009). http://www.bloomberg.com/apps/news?pid=20601087&sid=aNivTjr852TI.

created at the necessary rate. As reported in the New York Times on August 27, 2010:[14]

U.S. Economy Slowed to 1.6% Pace in 2nd Quarter

Economic statistics released Friday offered the clearest sign yet that the recovery, already acknowledged to be sauntering, had slowed to a crawl.

The government lowered its estimate of economic growth in the second quarter to an annual rate of 1.6 percent, after originally reporting last month that growth in the April-June period was 2.4 percent.

The revision is a significant slowdown from the annual rate of 3.7 percent in the first quarter and 5 percent in the last three months of 2009.

The news came at the end of a week that showed the economic retrenchment that began in the second quarter has spilled over into the summer. Existing home sales in July were down to their lowest level in a decade, and sales of new homes last month were at their lowest level since the government began tracking such data in 1963. Orders for large factory goods, excluding the volatile transportation sector, dropped in July, indicating that recovery in the manufacturing sector also was stalling.

With such grim reports, economists are now concerned that the outlook for job creation, which has been spluttering all summer, could deteriorate further. Companies and consumers tend to be spooked by bad news, and market analysts and economists worry that faltering confidence could cause employers to hold back on hiring.

"When you get a downshift in growth there is a risk that it will feed on itself," the chief economist at MF Global, James F. O'Sullivan, said. "The question now is to what extent has the improving trend just been temporarily set back or has it really been short-circuited."

In a speech Friday morning, the chairman of the Federal Reserve, Ben S. Bernanke, said that he expected the economy to continue on a growth track, "albeit at a relatively modest pace."

* * *

"Given all the stimulus and all the steroids and all the medication, the economy should be ripping right now," said David Rosenberg, chief economist and strategist for Gluskin Sheff & Associates. "The fact that it's not should lead people to believe that this is certainly not a common recession."

* * *

See also, The Wall Street Journal, reporting on August 24, 2010:[15]

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[14] www.nytimes.com/2010/08/28/business/economy/28econ.html?_r=1&scp=4&sq=us%20economy&st=cse.

[15] http://blogs.wsj.com/economics/2010/08/24/feds-evans-economy-in-extremely-modest-recovery/tab/print/.

Fed's Evans: Economy In 'Extremely Modest' Recovery

> Federal Reserve Bank of Chicago President Charles Evans said Tuesday the economic recovery is "extremely modest" but he believes it's unlikely the economy will fall into a double-dip recession.
>
> The pace of recovery from the worst economic meltdown since the Great Depression is "slower than we had hoped for," Evans said. He acknowledged that although the risk of a double dip is higher than it was six months ago, it is "not the most likely outcome."
>
> Recent economic figures point to a faltering economy, including surprisingly weak housing data, released after Evans' remarks Tuesday to the Indianapolis Neighborhood Housing Partnership. In recent weeks, investors have also become increasingly worried about the ailing job market. August's unemployment rate stood at 9.5%.
>
> Evans said he sees unemployment falling to a still troubling 8% next year. When the economy is doing well, the jobless rate should be around 5%, he said.
>
> Later, Evans told reporters that he is "increasingly uncomfortable with the lack of improvement in the labor market."

* * *

And then there are reports like this from the National Bureau of Economic Research on September 20, 2010 concluding that despite the bleak numbers, the recession actually ended in June 2009 — well over a year ago:[16]

> The Business Cycle Dating Committee of the National Bureau of Economic Research met yesterday by conference call. At its meeting, the committee determined that a trough in business activity occurred in the U.S. economy in June 2009. The trough marks the end of the recession that began in December 2007 and the beginning of an expansion. The recession lasted 18 months, which makes it the longest of any recession since World War II. Previously the longest postwar recessions were those of 1973-75 and 1981-82, both of which lasted 16 months.
>
> In determining that a trough occurred in June 2009, the committee did not conclude that economic conditions since that month have been favorable or that the economy has returned to operating at normal capacity. Rather, the committee determined only that the recession ended and a recovery began in that month.
> …

That report prompted the New York Times to observe on September 21, 2010:[17]

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[16] http://www.nber.org/cycles/sept2010.html.

[17] http://www.nytimes.com/2010/09/21/business/economy/21econ.html?_r=1&sq=recession%20over&st=cse&scp=1&pagewanted=print.

> The United States economy has lost more jobs than it has added since the recovery began over a year ago.
>
> Yes, you read that correctly.
>
> The downturn officially ended, and the recovery officially began, in June 2009, according to an announcement Monday by the official arbiter of economic turning points. Since that point, total output — the amount of goods and services produced by the United States — has increased, as have many other measures of economic activity.
>
> But nonfarm payrolls are still down 329,000 from their level at the recession's official end 15 months ago, and the slow growth in recent months means that the unemployed still have a long slog ahead.

* * *

And that reputed end of the recession over a year ago drew this reported response from President Obama:[18]

* * *

> President Barack Obama saw little reason to celebrate the group's finding that the recession had ended.
>
> Appearing at a town-hall meeting sponsored by CNBC, Obama said times are still very hard for people "who are struggling," including those who are out of work and many others who are having difficulty paying their bills.
>
> "The hole was so deep that a lot of people out there are still hurting," the president said. It's going "to take more time to solve" an economic problem that was years in the making, he added.

* * *

The County's experience reflects the problems of so many other public sector employers who have been devastated by dramatic decreases in revenue streams caused by the recession and the lack of a meaningful recovery.[19]

> Cook County is facing a financial crisis. In an attempt to offset an ever increasing budget gap created by decreasing tax revenue, the Cook County Board of Commissioners voted in March 2008 to increase the Cook County sales tax from 0.75 percent to 1.75 percent. In December 2009, however, the Board of Commissioners voted to repeal half of the 2008 sales tax increase, and, despite a veto of the measure by Cook County Board President Stroger, the Board of Commissioners overrode his veto and passed the sales tax reduction. As of July 1, 2010, Cook County's sales tax has been reduced to 1.25 percent. Based on current projections, this reduction will cost Cook County almost $32 million in tax revenue during fiscal year 2010 and $190 million in tax revenue during fiscal year 2011. Moreover, these already grim projections concerning lost sales

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[18] http://www.newsvine.com/_news/2010/09/20/5143429-economic-panel-says-recession-ended-in-june-2009.

[19] County Post-Hearing Brief at 3-4.

> tax revenue do not tell the entire story about Cook County's fiscal health. Cook County's expenses continue to increase, and, as Jaye Morgan Williams, Cook County's Chief Financial Officer, testified during these proceedings, Cook County estimates that it will have a $300 million budget shortfall in fiscal year 2011 irrespective of any wage increases granted to the units at issue or its entire bargained-for workforce of over 18,000 employees.

The County's Chief Financial Officer Jaye Morgan Williams further explained the County's revenue shortfalls:[20]

> A. ... The largest contributor to our revenue shortfall is the sales tax rollback that was decided by the County in the last year as well as significant implications in terms of our capacity to collect on patient fees at the health system.

The following table shows the status of the County's General Fund Revenue for FY 2007 - FY 2011:[21]

(in thousands)	**FY 2007**	**FY 2008**	**FY 2009**	**FY 2010** (estimate)	**FY 2011** (forecast)
Property Taxes	$413,814	$333,321	$354,279	$333,613	$276,919
Fees	$726,896	$703,497	$942,508	$838,017	$788,497
Home Rule Taxes	$749,716	$781,438	$1,008,591	$1,018,200	$824,000
Intergovernmental	$100,123	$84,278	$89,120	$89,161	$83,300
Other Revenues	$49,461	$32,141	$42,595	$34,350	$29,000
Total	$2,040,011	$1,934,675	$2,437,094	$2,313,341	$2,001,716

As revenues decreased, the numbers of full-time employees have also decreased, but the County's salary and benefits costs have increased:[22]

(in thousands)	**FY 2007**	**FY 2008**	**FY 2009**	**FY 2010** (planned)
Salary	$1,349,338	$1,385,612	$1,444,946	$1,477,883
YOY%	(3.41%)	2.69%	4.28%	2.28%
Benefit	$292,801	$254,018	$259,587	$299,745
YOY%	13.86%	(13.25%)	2.19%	15.47%
Salary & Benefit	$1,642,139	$1,639,631	$1,704,532	$1,777,628
YOY%	(0.73%)	(0.15%)	3.96%	4.29%
FTEs (not in thousands)	22,993.4	24,054.6	23,519.8	22,877.4

[20] Tr. III at 9.

[21] County Wage Presentation at 2.

[22] *Id*. at 3.

According to CFO Williams:[23]

> A. ... And if you look over the last seven years, we've reduced the average number of FTEs from 26,200 to 22,800. In that same timeframe, however, our salary and benefits have g[r]own from $1.5 billion to almost $1.8 billion.
>
> In fact, in 2010, the combination of benefit increases as well as salary increases was north of four percent when our actual year-over-year FTE reduction was 2.7 percent. So what we see is that the cost of employees is increasing for us over time and environment, most specifically as we look at 2011, where revenues will be declining.

CFO Williams testified that salaries and benefits constitute "... nearly 80%" of the General Fund expenditures and the County is faced with a "... $300 million shortfall we anticipate year over year as well as the cost increases associated with salaries and benefits."[24] CFO Williams accurately summed up the current situation as " ... probably the most challenging economic and operating environment we've seen in some time."[25]

The problem for interest arbitrators struggling to set economic terms and conditions of employment for new contracts remains as it surfaced after the economy crashed in the fall of 2008. The tools typically used by interest arbitrators before the economy crashed are of little help in this environment. *See City of Chicago, supra* at 25-26:

> For establishing terms and conditions of collective bargaining agreements, Section 14(h) of the IPLRA lists eight factors for consideration by interest arbitrators. Although there are eight statutory factors with no factors receiving more weight from the language of the statute, prior to 2009, parties in interest arbitrations and interest arbitrators — including the undersigned — typically placed great weight on the comparability factor found in Section 14(h)(4) of the IPLRA.[26] And prior to 2009, that is how the majority of these cases were liti-

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[23] Tr. III at 9.

[24] Tr. III at 9-10; County Wage Presentation at 3-4.

[25] Tr. III at 21.

[26] *See* Benn, "A Practical Approach to Selecting Comparable Communities in Interest Arbitrations under the Illinois Public Labor Relations Act," Illinois Public Employee Relations Report, Vol. 15, No. 4 (Autumn 1998) at 6, note 4 [emphasis added]:

> ... The parties in these proceedings often choose to give comparability the most attention. *See* Peter Feuille, "Compulsory Interest Arbitration Comes to Illinois," Illinois

[footnote continued]

gated, with most attention — and sometimes all of the arguments — focused on comparability.

"Wisdom too often never comes, and so one ought not to reject it merely because it comes late."[27] It is fair to conclude that prior to 2009, few in this area of practice — public administrators, union officials, advocates and neutrals — could have foreseen the drastic economic downturn we are now going through and then try to reconcile those conditions with the way parties present interest arbitrations and how neutrals decide those cases based wholly or partially on the comparability factor. That became readily apparent to me when I was asked to use comparable communities as a driving factor in cases decided after the economy crashed, but where the contracts in the comparable communities had been negotiated prior to the crash. I found that I just could not give the same weight to comparables as I had in the past. Given the drastic change in the economy, looking at those comparable comparisons became "apples to oranges" comparisons. *See North Maine, supra* at 12-13:

> Citation is not necessary to observe that, in the public sector, the battered economy has caused loss of revenue streams to public employers resulting from loss of tax revenues as consumers cut back on spending or purchasing homes and there are layoffs, mid-term concession bargaining and give backs (such as unpaid furlough days which are effective wage decreases). But the point here is that it still just does not make sense at this time to make wage and benefit determinations in this economy by giving great weight to comparisons with collective bargaining agreements which were negotiated in other fire protection districts at a time when the economy was in much better condition than it is now. There is no doubt that comparability will regain its importance as other contracts are negotiated (or terms are imposed through the interest arbitration process) in the period after the drastic economic downturn again allowing for "apples to apples" comparisons. And it may well be that comparability will return with a vengeance as some public employers make it through this period with higher wage rates which push other employee groups further behind in the comparisons, leaving open the possibility of very high catch up wage and benefit increases down the line. But although the recovery will hopefully come sooner than later, that time has not yet arrived. Therefore, at present, I just cannot give comparability the kind of weight that it has received in past years.
>
> Instead of relying upon comparables, in *ISP [Illinois State Police, supra]* and *Boone County,* I focused on what I considered more relevant considerations reflective of the present state of the economy as allowed by Section 14(h) of the Act — specifically, the cost of living (Section 14(h)(5)) as shown by the Consumer Price Index ("CPI").

[continuation of footnote]

Public Employee Relations Report, Spring, 1986 at 2 ("Based on what has happened in other states, most of the parties' supporting evidence will fall under the comparability, ability to pay, and cost of living criteria. ... *[o]f these three, comparability usually is the most important*.").

[27] *Henslee v. Union Planters National Bank & Trust Co.*, 335 U.S. 595, 600 (1949) (Frankfurter, dissenting).

Thus, prior to the economic crisis commencing in the fall of 2008, interest arbitrators placed great weight on the comparability factors found in Section 14(h)(4) of the IPLRA. As the economy crashed, my view became that it was inherently unfair to public sector employers (and the public) for interest arbitrators to use comparability as a driving factor for making these decisions because in an economy where public sector employers have taken such a hard hit, looking at contracts which were negotiated before the economy crashed did not yield "apples to apples" comparisons. Until the economy turns around or until a sufficient baseline of contracts in comparable entities have been voluntarily negotiated (or imposed through the interest arbitration process) after the economy crashed, I have been forced to turn to other factors which previously were not given as much weight as comparables — specifically, looking at the economy and the CPI found in Section 14(h)(5) of the IPLRA.

Here, in making some of its arguments, the Union relies upon contracts apparently negotiated prior to the economic crash and asserts "[t]here are strong arguments for this proposal based upon comparability."[28] Further, according to the Union, with respect to the wages it seeks, "[t]he salary increases proposed by the Union are modest and are well within the range paid by other employers in both the private and public sectors."[29] In these different and extraordinarily difficult economic times, I just cannot consider comparability arguments flowing from contracts negotiated or imposed prior to the current economic recession. Those comparisons do not yield "apples to apples" results.

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[28] Union Pre-Hearing Brief at 24; Union Exhs. 27, 28.

[29] Union Post-Hearing Brief at 5-7.

Returning to the CPI, as more fully explained *infra* at VII(1)(B), the problem then becomes how to weigh and evaluate present and future CPI data in a crashed economy beginning to go through a hoped-for but uncertain recovery. My suggestion to parties in these cases has been to negotiate re-openers for out years of their contracts (or to give interest arbitrators the authority to impose re-openers) so that the parties can assess the economic conditions in a more real time manner as those re-openers take effect rather than setting terms for future years when no one knows what the hoped-for recovery will look like and when (or whether) it may occur.[30] In large public employment settings such as Cook County (and putting politics aside as a new Cook County governing body will be structured in the upcoming elections), given the numbers of contracts, employees and difficulty in negotiating contracts, that approach of using re-openers is not always feasible. That is the case here as the parties seek to set the terms for several Agreements (and others to follow). The parties have not offered re-openers as part of their final offer packages and have not given me authority to impose those types of provisions.

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[30] *See e.g., Illinois State Police, supra* at 21 [footnote omitted]:

> For the parties and interest arbitrators trying to formulate contracts, these are remarkably difficult times. ...
>
> * * *
>
> Perhaps a cautious and practical way to approach negotiations and interest arbitrations in these uncertain and changing times is for parties to negotiate reopeners on economic items or to tie reopeners to triggers in the out years of agreements — *i.e.*, if changes in the cost-of-living or insurance costs occur, the parties have the option to reopen agreed upon provisions mid-term during the period of a contract. With negotiated reopeners, the parties can then assess the situation as the economy changes rather than project years out into the future with fixed obligations having no idea what the economic conditions will be. For now, final offer interest arbitration does not serve the parties well when flexibility is not built into the parties' offers. Until the economy settles, parties may also want to consider giving interest arbitrators the authority to impose reopeners along these lines or to not be bound by the final offer provisions of Section 14(g). ...

Therefore, it is against the backdrop of my limited authority in final offer interest arbitrations; my having to use tools that do not work well in a crashed economy; and the uncertainty of the present state of the economy that the terms and conditions of these new Agreements must be set.

V. ISSUES SUMMARILY RESOLVED

The process utilized in this proceeding as established by the February 26, 2010 order resulted in the parties identifying over 100 total issues which were in dispute spread through the four Agreements.[31] Pursuant to that order and after the parties identified the issues in dispute, on May 17, 2010 the parties presented their positions on those issues. Many proposals were withdrawn and others were held. Many other proposals were ruled upon by me as proposals that the parties would "not likely get" in an interest arbitration. Those particular disputes were resolved by me using the above-quoted standard that "[t]he burden for changing an existing benefit rests with the party seeking the change ... [and] ... in order for me to impose a change, the burden is on the party seeking the change to demonstrate that the existing system is broken." In other words, those proposals which were rejected by me were denied because, although they may have been "good ideas", the parties could not make showings that the existing systems or conditions were broken so as to require change by an interest arbitrator as opposed to the parties fixing the problems or changing the language through the negotiation process. Again, interest arbitration is a *very* conservative process and does not change contract provi-

[31] *See* March 12, 2010 compilation of offers prepared by the County showing 20 proposals from the County; 13 Union universal economic proposals; 29 Union universal proposals; 11 joint proposals; 14 Union proposals for Local 3692 (Correctional Sergeants); 4 Union proposals for Local 2226 (Correctional Lieutenants); 4 Union proposals for Local 3958 (Police Sergeants); 31 Union proposals for Local 2264 (Police Officers). The Union's submission dated June 1, 2010 shows 28 specific proposals.

sions for "good ideas" — that is for the parties to achieve through the give and take at the bargaining table.

Because of the enormity of the number of issues in dispute between the parties at the time of my first involvement with this case and, as discussed *infra* at VIII, because this award issues on a non-precedential basis, it will serve little purpose to list, detail or further discuss all of those proposals that I rejected on May 17, 2010. The summary ruling process established in the February 26, 2010 order served to significantly reduce the number of issues in this case and made the entire dispute more manageable. For purposes of the new Agreements, the issues that remain which have been focused upon by the parties in their briefs and at the hearings as well as those identified by the undersigned are those now discussed. For the new Agreements, unless the parties agree otherwise after this award issues, all other issues not specifically addressed in this award but were issues previously identified by the parties are now off the table, held for other upcoming negotiations or denied by me. As discussed *infra* at VIII, for future contracts, the parties are free to raise those issues rejected by me (or withdrawn) on May 17, 2010 and not be saddled with this award to prejudice their positions in future attempts to change terms of the Agreements.

VI. REMAINING ISSUES

The remaining issues in dispute are the following:

1. Wages.
2. Health Care.
3. Uniform Allowance.
4. Scheduling and removal of the arbitration provisions in Section 3.2 of the Police Officers Agreement.
5. Affidavits in Disciplinary Investigations.

6. Acting Up Pay for Correctional Lieutenants.

7. De- and Re-Deputization.

8. Timelines for Investigations.

9. Implementation of Discipline.

10. Rank Differential for Correctional Lieutenants.

11. Prevention of receipt of insurance opt-out payments.

12. Requirement to use all available benefit time such as sick leave, vacation. Personal days and compensatory time off before using Family Medical Leave Act time.

13. Overtime pyramiding under the Local 2264 Agreement.

14. Residency.

15. Zipper clause.

16. Mandatory retirement for all employees at age 65.

17. Requirement for an annual fitness and agility test.

18. Bidding restrictions in Local 3692 Agreement.

19. Time limits for arbitration demands under Section 12.10 of the Local 2264 Agreement.

20. Duty disability pay requirement that employees receive 100% of their salary for the first year of a disability due to occupational disease or injury.

21. Step compression for Police Sergeants.

22. Changing the rank differential between Police Officers and Sergeants.

23. A "me too" provision for certain items from the universal bargaining table.

VII. RESOLUTION OF THE REMAINING ISSUES

1. Wages

A. The Parties' Final Offers

There is no disagreement on the duration of the Agreements. All Agreements will be for the term December 1, 2008 through November 30, 2012.

The parties' final wage offers are as follows:[32]

EFFECTIVE DATE	COUNTY	UNION
12/01/08	1.75%	2.00%
12/01/09	1.25%	1.50%
12/01/10	1.75%	2.00%
12/01/11	2.25%	2.00%
06/01/12	--	1.00%
Total	7.00%	8.50%

B. Discussion

1. Selection of the Wage Increase

Because this is final offer interest arbitration, I am limited to selection of one of the two total wage offers. For reasons discussed *supra* at IV, because of the crash in the economy, the lack of a meaningful recovery and the change those economic conditions have reflected in how interest arbitrations have been decided, for now, "'... I [have] focused on what I considered more relevant considerations reflective of the present state of the economy as allowed by Section 14(h) of the Act — specifically, the cost of living (Section 14(h)(5)) as shown by the Consumer Price Index ("CPI").'" *City of Chicago, supra* at 25-26 citing *Illinois State Police, supra and Boone County, supra.* That analysis dictates selection of the Union's 8.5% wage proposal in this case.

The BLS defines the Consumer Price Index as "... a measure of the average change in prices over time of goods and services purchased by households."[33] According to the most recent data from the BLS, since December

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[32] County Revised Final Offer dated July 30, 2010, Proposal No. 1; Union Revised Final Offer dated August 6, 2010, Proposal No. 1. According to the Union's final offer, the effective dates are "... the first full pay period on or after ..." the designated effective date.

[33] http://www.bls.gov/news.release/archives/cpi_09172010.pdf at 5.

2008 (the month these Agreements take effect) up through August 2010, the changes in the CPI-U are as follows:[34]

CPI From December 2008 To The Present (Not Seasonally Adjusted)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2008												210.228
2009	211.143	212.193	212.709	213.240	213.856	215.693	215.351	215.834	215.969	216.177	216.330	215.949
2010	216.687	216.741	217.631	218.009	218.178	217.965	218.011	218.312				

CPI Month-To-Month Percentage Change December 2008 To The Present (Not Seasonally Adjusted)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2008												-1.0
2009	0.4	0.5	0.2	0.2	0.3	0.9	-0.2	0.2	0.1	0.1	0.1	-0.2
2010	0.3	0.0	0.4	0.2	0.1	-0.1	0.0	0.1				

In the first year of the Agreements — December 2008 through November 2009, the CPI increased by 2.9% in that 12 month period.[35] For that same period, the County has offered an increase of 1.75% while the Union seeks a 2.0% increase. For the first year of the Agreements, both offers are therefore below what is known, in fact, to be an increase in the CPI. The Union's 2.0% offer for the first year of the Agreements is closer to the CPI and therefore closer to keeping pace with inflation for that period than is the County's 1.75% offer. However, while the Union's offer for the first year is still closer to the increase in the CPI for that period, the Union's 2.0% offer is nevertheless .9% below the actual 2.9% increase in the CPI in the first year of the Agreements.

As of the this writing, the parties are in the second year of the Agreements — December 2009 through November 2010. For the second year of the

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[34] For not seasonally adjusted data, access the BLS website for the BLS data bases, by going to http://data.bls.gov/cgi-bin/surveymost?cu, then designate year ranges for U.S. All items, 1982-84=100, retrieving the data and then, if further specificity is desired, by using the link to "more formatting options" and again retrieving the data.

[35] (216.330 - 210.228) = 6.102. 6.102 ÷ 210.228 = 2.9%.

Agreements there is reported CPI data from the BLS for the first nine months — December 2009 through August 2010. According to the CPI data from the BLS issued September 17, 2010, for the first nine months of the 2009-2010 contract year (December 2009 through August 2010), the CPI has increased 1.1%.[36] For that second year of the Agreements, the County has offered an increase of 1.25%, while the Union seeks a 1.5% increase. Given the modest increases in the CPI on a month-to-month basis during the second year of the Agreements thus far, it is reasonable to conclude that as of this writing, increases in the CPI for the second year of the Agreements as of the end of November 2010 will be closer to the County's proposed 1.25% increase rather than to the Union's proposed 1.5% increase. The County's offer for the second year of the Agreements is therefore closer to the CPI and therefore closer to keeping pace with inflation for that period.

However, it must be remembered that in the first year of the Agreements, the Union's 2.0% offer which was higher then the County's 1.75% offer was still lower than the actual 2.9% increase in the CPI for that period. And, as of this writing, from the commencement of the Agreements on December 1, 2008 through August 31, 2010, the CPI has actually increased 3.8% overall[37] and 4.0% if the two periods are looked at separately (December 1, 2008 - November 30, 2009 (2.9%) and December 1, 2009 - August 31, 2010 (1.1%)).[38]

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[36] (218.312 - 215.949) = 2.363. 2.363 ÷ 215.949 = 1.1%.

[37] (218.312 - 210.228) = 8.084. 8.084 ÷ 210.228 = 3.8%.

[38] If the compounding aspect of wage increases is taken into account, the Union's offer in the first two years of the Agreements is still below the total actual 3.8% CPI increase for the period December 2008 through August 2010. For example, if an employee earned $50,000 per year at the end of the last Agreements in November 2008, the Union's proposed first year wage increase of 2.0% would bring that employee to $51,000. The Union's proposed second year wage increase of 1.5% would then take that employee to $51,765. The actual percentage increase resulting from the compounding of the wage increases amounts to a 3.53% increase for that employee ($51,765 - $50,000 = $1,765. $1,765 ÷ $50,000 = 3.53%). The compounded 3.53%

[footnote continued]

So taking a snapshot of what is actually known as of this writing (which is based on actual CPI data as opposed to forecasts), the following is evident:

Period	County Offer	Union Offer	CPI Periodic Increase	Actual CPI Total Increase To Date
12/01/08 - 11/30/09	1.75%	2.00%	2.9%	
12/01/09 - 08/31/10	1.25%	1.50%	1.1%	
Total	3.00%	3.50%	4.0%	3.8%

Therefore, given the actual CPI data now available, as of this writing the Union's offer for the first two years of the Agreements (3.5%) is closer to keeping pace with the increases in the CPI (3.8% total) than is the County's offers for those periods (3.0%). Thus far and based on actual known CPI data, the Union's offer must be favored on this factor.

For the third and fourth years of the Agreements — December 2010 through November 2011 and December 2011 through November 2012 — no actual CPI data exist. At this point, I have to turn to the forecasters.

In total percentages, in the last two years of the Agreements, the parties are only 1.0% apart. While the monetary differences are quite substantial (particularly if the costs of similar increases are applied County-wide), nevertheless, the percentage differences certainly are not great over a two year period. The County's offer for the last two years of the Agreements is 1.75% effective December 1, 2010 and an additional 2.25% effective December 1, 2011 (for a total of 4.0%), while the Union's offer is 2.0% effective December 1, 2010, an additional 2.0% effective December, 2011 and then another 1.0% effective June

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[continuation of footnote]
increase is still below the actual 3.8% increase in the CPI for the first one and three-quarters years of the Agreements.

1, 2012 (for a total of 5%). So the parties are 1.0% apart in the last two years of the Agreements — 4.0% offered by the County and 5.0% offered by the Union.[39]

County CFO Williams characterized one forecaster (relied upon by the Union) as doing "[g]uesswork ... an outlier."[40] Union witness Peter Schmalz characterized the forecasters' predictions as "... all over the map."[41] Williams and Schmalz are both correct. One does not get a sense of certainty or unanimity after looking at the blizzard of data and predictions from the forecasters for 2011 and 2012.

For example, the Federal Reserve Bank of Philadelphia issues a quarterly Survey of Professional Forecasters ("Survey").[42] With respect to the CPI, the Survey distinguishes between "Headline CPI" and "Core CPI" — the difference being that "Headline CPI" includes forecasts concerning prices in more volatile areas such as energy and food, while "Core CPI" does not. Because employees have to pay for energy and food, it appears that Headline CPI is more relevant for this discussion. However, in any event, examination of the last three quarterly Surveys issued February 12, 2010, May 14, 2010 and August 13, 2010

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[39] That 5% total offer by the Union is really not 5% because the Union's last percentage increase is to be effective June 1, 2012 — halfway through the contract year — making the Union's real total offer 1.5% for the last year of the Agreement rather than 2.0%, leaving it's total offer for all purposes in the last two years of the Agreements at 4.5%. However, for ease of discussion and to give the County the benefit of the doubt, I will assume the Union's offer for the last two years of the Agreements to be a total of 5.0%.

[40] Tr. III at 69.

[41] Tr. I at 13.

[42] According to the Federal Reserve (http://www.philadelphiafed.org/research-and-data/real-time-center/survey-of-professional-forecasters/):

> The Survey of Professional Forecasters is the oldest quarterly survey of macroeconomic forecasts in the United States. The survey began in 1968 and was conducted by the American Statistical Association and the National Bureau of Economic Research. The Federal Reserve Bank of Philadelphia took over the survey in 1990.

shows the following comments, projections and revisions for 2010, 2011 and 2012 (Q4/Q4).[43]

In a brief short period of six months from February 2010 to August 2010, the opening comments in the Surveys went from the First Quarter Survey's statement of "[t]he U.S. economy *will grow* at an annual rate of 2.7 percent over each of the next five quarters, according to 42 forecasters surveyed by the Federal Reserve Bank of Philadelphia" to the Second Quarter Survey's statement of "[t]he outlook for the U.S. economy over the next few quarters *looks stronger* now than it did just three months ago, according to 44 forecasters surveyed by the Federal Reserve Bank of Philadelphia" to the Third Quarter Survey's statement of "[t]he outlook for growth in the U.S. economy *looks weaker* now than it did just three months ago, according to 36 forecasters surveyed by the Federal Reserve Bank of Philadelphia" [emphasis added].[44]

And the three Surveys revised their CPI forecasts as follows:[45]

	HEADLINE CPI			CORE CPI		
Year/Survey	**Survey Q1**	**Survey Q2**	**Survey Q3**	**Survey Q1**	**Survey Q2**	**Survey Q3**
2010	1.7%	1.6%	0.9%	1.4%	1.0%	0.9%
2011	2.1%	2.0%	1.8%	1.7%	1.6%	1.5%
2012	2.3%	2.4%	2.1%	2.0%	2.0%	1.9%

If the parties are 1.0% apart in the last two years of the Agreements, how can I rely upon these kinds of forecasts for 2011 and 2012 which are fluctuat-

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[43] The First Quarter 2010 Survey of Professional Forecasters is found at http://www.philadelphiafed.org/research-and-data/real-time-center/survey-of-professional-forecasters/2010/survq110.cfm.
The Second Quarter 2010 Survey of Professional Forecasters is found at http://www.philadelphiafed.org/research-and-data/real-time-center/survey-of-professional-forecasters/2010/survq210.cfm.
The Third Quarter Survey is found at http://www.philadelphiafed.org/research-and-data/real-time-center/survey-of-professional-forecasters/2010/survq310.cfm.

[44] *Id*.

[45] *Id*.

ing as much as they are in the short-term within the narrow world of a 1.0% difference for that two year period in the future so as to change a result favoring the Union's offer which is based upon known CPI data for the period December 2008 through August 2010? Just from the first to the third quarters in 2010, the Federal Reserve's Surveys revised the CPI forecasts for Headline CPI for 2011 by .3% (going from 2.1% to 1.8%) and for 2012 by .2% (going from 2.3% to 2.1%). The Surveys' forecasts for Core CPI were similarly revised for 2011 by .2% (going from 1.7% to 1.5%) and for 2012 by .1% (going from 2.0% to 1.9%). These may seem like small percentage changes. But where, as here, the parties are only 1.0% apart over a two year stretch in the future, the Surveys' revisions which occurred in such a brief span of time emphasizes a point the Union makes that "[i]t is impossible to predict what will happen with any confidence" and underscores the County's observation that "[t]he Joint Employers are mindful of the challenge that the Arbitrator faces in setting wage increases for the future when sophisticated professional forecasters cannot come to a consensus about future inflationary conditions."[46]

Further, how can I rely upon these kinds of forecasts when in just a few months the Federal Reserve's Surveys went from stating that "[t]he outlook for the U.S. economy over the next few quarters *looks stronger* now than it did just three months ago ..." in the Second Quarter Survey to the Third Quarter Survey statement of "[t]he outlook for growth in the U.S. economy *looks weaker* now than it did just three months ago ...." [emphasis added]? It's hard to place reliance upon these kinds of waffling projections for the out years of the

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[46] Union Pre-Hearing Brief at 3; County Post-Hearing Brief at 18.

Agreements when, in reality, the parties are so close in their offers for that period as they are here — 1.0%.

And that's just the Federal Reserve's Surveys — which may be more conservative in their forecasts. Turning to the County's forecasts as presented at the hearing, the "guesswork" of the forecasters alluded to by County CFO Williams and the results of the forecasters being "… all over the map" as stated by Union witness Schmalz are evident.[47] The County presented the results from nine forecasters.[48] According to the County:[49]

> … The majority of forecasts for inflation during 2011 appear to be clustered in the 1 percent to 1.6 percent range with just a few of the highest projections in the near 2 percent range. Although fewer projections of inflationary conditions exist for 2012, the majority of these projections seem to be clustered in the low 2 percent range -- with the exception being AFSCME's chosen Moody's projection of over 3 percent. …

Even if those conclusions are drawn from the forecasters relied upon by the County, with the parties' 1.0% differential overall for the two years 2011 and 2012, those varying forecasted ranges — as small as they may be — cannot justify either party's proposal for the last two years of the Agreements with any degree of certainty.

In *City of Chicago, supra* at 35, I looked to forecasts from the President's Council of Economic Advisors made in preparation for the FY 2011 federal budget where the Council opined that "'… inflation will be 1 percent over the four quarters of 2010, 1.4 percent over 2011, and 1.7 percent over 2012.'"[50]

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47 Tr. III at 69, Tr. I at 13.

48 County Wage Presentation at 8 (Wells Fargo, U. S. Chamber of Commerce, Goldman Sachs, Moody's Economic.com, JP Morgan, Bank of America Merrill Lynch, Federal Reserve and Bloomberg Median).

49 County Post-Hearing Brief at 18.

50 *Id*. quoting Christina Romer, Chair of the President's Council of Economic Advisors in "The Economic Assumptions Underlying the Fiscal 2011 Budget" (February 1, 2010), http://www.whitehouse.gov/sites/default/files/microsites/20100201-cea-statement-economic-assumptions-underlying-fiscal-2011-budget.pdf.

Now, just eight months later after those forecasts were made, for CPI comparisons, those forecasts by the Council of Economic Advisors suffer the same fate of not being dispositive of this dispute. The Council's forecast for 2010 appears to be on track (BLS showing a .75% increase for the first eight months of 2010[51] and the Council forecasting a 1.0% increase in inflation for 2010). But the Council of Economic Advisors' forecast for inflation at 1.4% for 2011 and 1.7% for 2012 are below even the recently revised downward forecasts of the Federal Reserve's Third Quarter Survey of Professional Forecasters for Headline CPI (1.8% for 2011 and 2.1% for 2012) and Core CPI (1.5% for 2011 and 1.9% for 2012) set forth above.[52]

In the context of predicting what will happen to the CPI in 2011 and 2012, these forecasts — all of them — are really "guesswork" and "all over the map" as testified by both sides at the hearing. With the parties only 1.0% apart in the last two years of the Agreements and the forecasters showing such a range of disparity in predictions with respect to those last two years and further considering changing statements from those who are certainly much better equipped than I am for predicting the future economic conditions and how the recovery will unfold (with sometimes fluctuating changes within those predictions), I am unable to rely upon those predictions to resolve this aspect of the dispute.

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[51] *See* the CPI chart *supra* for January through August 2010. (218.312 - 216.687) = 1.625. 1.625 ÷ 216.687 = .75%. With four months to go in 2010 and with seven of eight months showing upward or no increases, the Council's forecast for inflation (as CPI is examined) seems on target for 1.0% for 2010.

[52] *In City of Chicago*, *supra*, using Council for Economic Advisors' inflation forecasts was an obvious reason to conclude that the FOP's requested increase totaling 19.25% over four years and the City of Chicago's proposed increase totaling 5.0% over five years should both be rejected. That is not the case here where in the last two years of the Agreements the parties are only 1.0% apart.

But I have to select one of the parties' *total* wage offer. I cannot slice those offers apart on a year-by-year basis (*i.e.*, selecting the Union's offer for some years and the County's offer for others) or otherwise formulate a different wage increase as done in *City of Chicago*, *supra*.

So what I am left with is *actual* CPI data for the first year of the Agreements; *actual* CPI data for three-quarters of the second year of the Agreements; and guesswork and results all over the map for predicting the third and fourth years of the Agreements which, in the end, shows both parties' offers for the last two years of the Agreements to have a shared degree of reason, simply because they are only 1.0% apart in the last two years of the Agreement. The choice becomes obvious. I can only choose one of the two total wage offers. The *actual* data for the periods which takes the parties almost half-way through the duration of the Agreements shows that the Union's wage offer is closer to the CPI, but is still running behind the actual increase in the CPI for the same period (*see* the above chart tracking the first two years of the Agreements and the actual increases in the CPI). Given how close the parties are in the third and fourth years of the Agreements (1.0% apart) and further given the fluctuating forecasts which do not definitively support either party's offers in the third and fourth years, I cannot rely upon speculation and guesswork of the forecasters for the out years of the Agreement to change what is actually known from the data existing on the CPI for the periods of the Agreements that have passed so far. Because the Union's wage offer is closer to the CPI (and even below it) for the almost first two years of the Agreements thus far, the Union's offer is the more reasonable in its entirety and must be selected.

The Union's wage offer is selected.

2. The County's Arguments

The County's well-framed arguments on the wage issue not addressed above do not change the result.

First, the County raises the impact the Union's wage offer will have on potential requirements for layoffs. The County argues:[53]

> ... The Joint Employers add that another important fact to be taken into account is that during this crisis layoffs and or concessions have been a salient feature of public employment in this geographical area but have not thus far affected the units involved in this interest arbitration. The Joint Employers make their proposals with the intention of limiting layoffs to the extent possible. AFSCME's final offers will require substantially more layoffs.

The County further argues:[54]

> ... In total, the first pass budget forecast estimates a $300 million budget shortfall in fiscal year 2011.
>
> AFSCME suggests that Cook County can absorb this shortfall for 2011 through expense reduction. This suggestion is fatally flawed for a number of reasons. First, Cook County's nonpersonnel expenses are not fixed. Much of these proceedings have been concentrated on actual and projected inflation. In the same way that inflation reduces an employees' purchasing power, inflation diminishes Cook County's purchasing power. The end result is that Cook County must spend more to meet its obligations. Second, wages and benefits comprise 80 percent of Cook County's expenditures. AFSCME cannot possibly expect Cook County to reduce expenditures in a large enough magnitude to eliminate the projected budget deficit without somehow reducing the greatest budget line item: wages and benefits. Yet AFSCME proposes significant wage increases and maintaining the status quo with respect to benefits. It is simply impossible to create the type of savings that Cook County needs if 80 percent of the budget is not only untouchable but increasing. Finally, AFSCME assumes that, because Cook County was able to absorb the loss of $32 million in sales tax revenue during 2010 without layoffs, it will be able to absorb the significantly greater shortfall of $190 million in 2011 through similar measures. If every dollar were the same, this theory might hold water. Unfortunately, every dollar is not the same. The smaller the budget shortfall, the easier it is to absorb. Eventually the "easy" cuts are extinguished: virtual layoffs only work when there are enough unfilled vacancies; nonpersonnel expenditure cuts can only trim budgets so much; and Cook County only has so much fat to trim before it reaches muscle. As Ms. Morgan Williams testified, "I do know with 80 percent of my costs being made up of salary and benefits, we are likely to have some impact on employees."
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> The impact on employees will be huge. Cook County estimates that, if the Arbitrator accepts the Joint Employers' offers on both wages and healthcare, 559

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53 County Pre-Hearing Brief at 3.

54 County Post-Hearing Brief at 22-23 [record citations omitted].

> AFSCME members will be laid off. Assuming the Arbitrator's decision sets the pattern for wage increases across Cook County's bargained-for workforce of 18,000 employees -- as Cook County believes it will -- accepting the Joint Employers' offers on both wages and healthcare will result in 3,082 employees being laid off on a countywide basis. The consequences of accepting AFSCME's wage offer are even more dire with the potential layoffs of 648 AFSCME members and 3,574 employees countywide.

CFO Williams testified that there may well be layoffs resulting from selection of the Union's wage offer — to a greater degree than had the County's wage offer been selected:[55]

> A. So when I look at the challenges of the $300 million shortfall we anticipate year over year as well as the cost increases associated with salaries and benefits and I look at our capacity to deal with those challenges from revenue shortfalls, we know we are going to have to look at managing and impacting our total cost of employees in some way to accommodate our planned revenue reductions or anticipated revenue reductions.

According to the County, under its proposal for a 7% wage increase and including its Health Care proposal (discussed *infra* at VII(2)), there will be a "layoff impact" on 559 AFSCME represented employees and 3,082 employees County-wide.[56] Further, according to the County under the Union's proposed 8.5% wage increase, 648 AFSCME represented employees will be laid off and 3,574 employees will be laid off County-wide.[57]

There may well be layoffs in the coming months and years of the Agreements and selection of the Union's offer may well increase the number of employees impacted by those layoffs from those projected under the County's offer. However, the Union was obviously well-aware of that potential going into this proceeding and nevertheless maintained its position on the wage offer. If layoffs occur to the degree stated by the County, it will come as no surprise to the Union. But the short answer to this argument by the County that the po-

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55 Tr. III at 10.

56 County Wage Presentation at 11-12; Tr. III at 19-20.

57 *Id*.

tential for layoffs must be taken into account in deciding this case is that the potential for layoffs or increased layoffs is something I certainly do not want to see happen, but the potential for layoffs is not a consideration in setting the wage rate in this interest arbitration.

Budget considerations drive collective bargaining negotiations. However, if negotiations fail to establish economic conditions for a contract and the parties have to resort to interest arbitration to do what they could not, then the result of the interest arbitration imposed by a third party such as myself ultimately drives the budget. If the result were otherwise, there would be no need for interest arbitration or use of the statutory factors under Section 14(h) of the IPLRA to resolve these kinds of disputes because the only question would be whether a public employer's budget allows for the terms of the requested economic items in dispute. The interest arbitration process would then become a battle of accountants offering theories on whether proposals could be supported by a public employer's budget. That is not what the interest arbitration process is about. The interest arbitration process sets economic conditions for contracts based on statutory factors and does not look to see how money can be allocated or found in a budget to pay for an offer found appropriate through application of the statutory factors in Section 14(h) of the IPLRA.

My personal goal is to avoid layoffs wherever and however possible. Layoffs of public employees do not just impact the employees who have been laid off. The public suffers through loss of services previously performed by those employees who are laid off. If the employees are laid off hold revenue generating positions (*i.e.*, those who issue citations requiring the payment of fines), then there is a direct loss of revenue to the public employer as a result of laying off revenue generating employees. Laid off employees purchase less items and

therefore pay less taxes. And, if the laid off employees can no longer pay taxes, defaults cause more loss of revenue. And, if those employees laid off can no longer pay for medical care, the cost of medical treatments could end up on the public employer's doorstep as care is given and paid for through public health systems such as those provided by Cook County.

This recession has shown me all to well what happens when employees are laid off in the kind of economic conditions now stressing the country. *See* my award earlier this year in *Chicago Transit Authority and Locals 241 and 308 Amalgamated Transit Union,* Grv. Nos. 1209-04, etc. (February 3, 2010) where, in a grievance arbitration, I addressed the layoff of over 1,000 CTA employees required by a budget deficit (created in large part by former Governor Blagojevich's seniors ride free amendment to legislation which caused a $36 million loss of revenue in to the CTA as part of a $96 million budget deficit in 2009):[58]

> And what is the impact of being unemployed in this economy? If a recent New York Times/CBS poll is a reliable indicator, that impact is devastating. According to that study which examined recently unemployed adults, 26% had been threatened with eviction, foreclosure or have lost their homes; 47% were without health insurance or health care coverage; 54% cut back on doctor visits or medical treatments; and 48% experienced emotional issues like anxiety or depression. Using those percentages on the 1,019 employees represented by the Unions who will be laid off effective February 7, 2010, 265 will be threatened with eviction, foreclosure or will lose their homes; 479 will go without or lose their health care coverage; 550 will cut back on doctor visits or medical treatments; and 489 will experience emotional issues like anxiety or depression.
>
> The layoffs of the 1,019 employees will therefore be tantamount to a mass execution. These laid off employees will likely have little prospects of employment — let alone equivalent employment — and they will suffer the hardships of the many who have recently lost their jobs in this recession.

Finding the necessary sources of revenue to limit or prevent layoffs is not for me as an interest arbitrator in this case. If it is to be exercised, that func-

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[58] *Id*. at 5-6 [citing Luo and Thee-Brenan, "Poll Reveals Depth and Trauma of Joblessness in U.S. Emotional Havoc Wreaked on Workers and Family", New York Times (December 15, 2009)].

tion is properly placed in the hands of elected officials and appointed administrators. As CFO Williams testified:[59]

> [Q]. I take it that part of your job is to give advice as to potential sources of revenue?
>
> [A]. Yes, that is a portion of my job ... not a significant portion of my job. We really rely on the agencies to focus on the opportunities for revenues. I am responsible for home rule taxes, so in those particular areas, we do focus on revenues.
>
> [Q]. So home rule taxes would be the kinds of things that the County, if it desired to, could increase --
>
> [A]. Yes.
>
> [Q]. -- putting aside the political ramifications of that?
>
> [A]. Putting aside political ramifications, which generally are profound.
>
> [Q]. Yes, as we saw with the sales tax?
>
> [A]. Yes.
>
> [Q]. Okay. And I take it, just generally, there are other potential sources of revenue such as increase taxes?
>
> [A]. A municipality, in most instances, always has the opportunity to increase taxes. It's the capacity for the economy to bear that increase and the politicians to make the increase. But, generally, when you're increasing taxes, you're creating a burden to the citizen banks in the region.
>
> [Q]. In fact, you're probably putting a burden on the employees, who as a result, have to pay those increases?
>
> [A]. Absolutely.

The potential for layoffs flowing from the selection of the Union's wage offer is something that will have to play out as the County through its elected officials and administrators determines whether, to what extent and how it will fund increased costs caused by selection of the Union's wage offer. However, the potential for layoffs does not play a part in the setting of the wage rates in this proceeding. The statutory factors in the IPLRA govern that determination.

Second, and staying with the County's layoff argument, stated simply, the County is really making an inability to pay argument — *i.e.*, that the

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[59] Tr. III at 73-74.

County cannot pay for the Union's proposed wage increase and, if the Union's wage offer is selected, there will be layoffs in significant numbers. That view of the County's argument is not sufficient to change the result.

And again going to the increased costs caused by the selection of the Union's wage offer, Section 14(h)(3) of the IPLRA provides for consideration of "[t]he interests and welfare of the public and the financial ability of the unit of government to meet those costs" — *i.e.*, the "inability to pay" factor.

But "inability to pay" cannot be equated with "unwillingness to pay". To come to that conclusion, one only has to look to the series of interest arbitrations arising out of wage disputes in East St. Louis, Illinois. If there has long been an economically distressed municipality in Illinois, that municipality certainly is East St. Louis. However, in a series of interest arbitrations going back to 1993 in East St. Louis, reliance on the "inability to pay" factor has not been successful — even after the economy crashed. *See City of East St. Louis and Illinois Fraternal Order of Police Labor Council,* S-MA-09-085 (Reynolds, September 4, 2010) at 19-20 (and cases cited therein):

> While the City claims an inability to pay any increases, I note that the City has argued an inability to pay in almost every previous arbitration, even in better economic times than today. As Arbitrator Briggs stated in awarding the Union's wage proposal for the 3 years prior to the current interest arbitration:
>
> > Indeed in past interest arbitration proceedings it has claimed an inability to pay, has lost on the wage issue, and has still been able to meet the Union's successful wage demands.
>
> * * *
>
> In the first interest arbitration between these parties in 1993, the City also proposed a wage freeze to counter he FOP's proposal of 5% in each of two years. In that case, the City stated that it was operating at a deficit, had been unable to pay its employees on a regular basis, that incoming revenues were being attached, and that its financial situation was so bad that the State of Illinois had created the Financially Distressed City Act, which applied only to the City. Arbitrator Albert Epstein found the Union's 5% increase to be appropriate.
>
> ... While it is true that they have not budgeted for them, the City has previously provided wage increases in years where their expenditures exceeded revenues.

From an economic standpoint, Cook County is certainly not East St. Louis. And if the inability to pay factor in Section 14(h)(3) cannot be successfully used to prevent or limit wage increases in a municipality like East St. Louis, then that factor cannot be used for setting wage rates in Cook County.

There is no inability to pay here. There is an unwillingness to pay based on budgetary considerations and decisions reasonably made by the County that from a budget standpoint anything more than 7.0% is not fiscally responsible. I cannot fault or second-guess that decision based on the skillful determinations made by officials such as CFO Williams who are looking out for the fiscal best interests of the County under current budgeting limitations. However, if elected officials and administrators choose not to fund the Agreements by adjusting the budget or finding other sources of revenue, then there may well be layoffs — even substantial ones. As an interest arbitrator, I just cannot prevent that from happening.

Third, the County disagrees with my use of the contract years (December through November) for analysis of the CPI.[60] I recognize that if different periods are used for the analysis, then there are different conclusions which can be reached because the CPI has been yielding different numbers depending on which month of the year or which period is selected for beginning the analysis.[61]

The IPLRA factor gives no real guidance concerning specifically how to look at the CPI. Section 14(h) only tells me to use "... as applicable ... (5) [t]he

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[60] County Post-Hearing Brief at 6-15.

[61] As shown through accessing the BLS CPI data bases as described *supra* at VII(1)(B)(1) at footnote 34, the BLS data bases offer many ways to examine historic and recent CPI data, including original data; comparisons of increases for 1, 2, 3, 6, and 12 month periods; year ranges; year-to-year monthly comparisons, etc.

average consumer prices for goods and services, commonly known as the cost of living". I have used the years of the Agreements as the measure for CPI comparisons in this case. Those are reasonable measuring periods. The employees under the Agreements experience the fluctuations in the cost-of-living during those periods and their wage increases are designated for those same periods. Without more explicit guidance from the IPLRA, I can only do what is reasonable. And it is reasonable under this statutory factor to measure wage increases for periods ranging from December through November against the cost-of-living during those same periods. That is what I have done for the contract years deemed appropriate by the parties. If the CPI numbers were reversed so that there were negative movements in the CPI during the contract years, that result would have been used against the Union's position. That did not happen here. The years of the Agreements thus far show a rise in the CPI. The use of the contract years to measure the CPI is reasonable.[62]

Fourth, the County also points out that many employees will be making step movements during the four years of the Agreements and "[a] step increase is nothing more than another name for a wage increase."[63] The County points to the testimony of Union witness Schmalz who testified that annual steps are 4.5%; for those employees in longevity, movements could vary between 4.5%

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[62] For example, if the Agreements had expired August 31, 2008 rather than November 30, 2008 and the first year of the Agreements was for the period September 1, 2008 through August 31, 2009, based on BLS data the CPI increase for that period there would have been a decrease in the CPI for that period rather than an increase for the actual first year of the Agreements. According to the BLS, the September 2008 CPI stood at 218.783 and the August 2009 CPI stood at 215.834 — a 1.3% decrease as opposed to the 2.9% increase for the actual first year of the Agreements (December 1, 2008 - November 30, 2009). Examining changes from December 2008 to December 2009 or average quarter-over-quarter comparisons yield different results as well. I find that using the actual contract years as specified in the Agreements is the best approach. That gives the best comparison on how wage increases for the specific contract periods compare to cost-of-living increases for the same periods.

[63] County Post-Hearing Brief at 19.

and 2.25% and "[t]he majority of employees … would be getting one step over the life of this contract, although some of them may have already gotten it."[64]

The County asserts that since the first day of the Agreements through August 31, 2010 — a 21 month period — "… 293 bargained-for members made one step increase and 40 bargained-for members made two step increases … [t]hus 333 of the total 683 bargained-for employees who have remained in the units since the stated expiration of the Agreements have already received in less than two years at least one step increase."[65] Using its wage offer coupled with step increases, the County then projects out the average wage increases for the four years of the Agreements showing a percentage increase ranging from 10.09% to 15.69% (depending on the bargaining unit); use of the BLS Inflation Calculator for 2009 and 2010 shows the wages necessary to keep pace with the CPI increases and which, according to the County shows that the County's offer exceeds keeping pace with the cost-of-living.[66]

What the County is doing here to support its wage offer is using part of the discussion I used in *City of Chicago, supra*. In *City of Chicago* (and similar to employees under the Agreements with the County), the existing pay plan provided for step movements. I took examples of Chicago police officers who could move as many as three and four steps during the life of that contract and demonstrated what those movements could mean in real dollars and percentage increases.[67] But the main use of that discussion was to show why one party's offer (the FOP's) could not be selected. That discussion was not used as

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64 County Post-Hearing Brief at 19, citing Tr. I at 45-46.

65 County Post Hearing Brief at 19-20.

66 *Id*. at 19-21. The BLS inflation calculator can be found at http://data.bls.gov/cgi-bin/cpicalc.pl.

67 *City of Chicago, supra* at 33-34.

the driving factor to justify selection of an offer — that was done by use of the CPI. That analysis was used later to show why the determined wage offer kept pace with the CPI, but it was the CPI that drove the establishment of the wage offer — the same factor here that requires selection of the Union's offer.

When *City of Chicago* issued in April 2010, the economy was in basically the same shape as it is today. Yet, the FOP sought a 19.25% wage increase for the four year period July 1, 2007 through June 30, 2011.[68] I found that "… the Lodge's offer of 19.25% (which only goes through June 30, 2011) far out-paces the modest increases in the cost-of-living as the economy begins to show what now appears to be indications of a sluggish recovery."[69] The analysis of step movements and actual percentage increases further showed that under the FOP's offer there could be Chicago police officers actually achieving increases of 40.86% (for three step movements in four years) and even 47.95% increases (for officers who moved four steps in four years).[70] Given those types of increases resulting from the FOP's offer, I found that "[i]n this economy with other City employees taking unpaid furlough days, waived benefits, eliminated wage increases or layoffs and the City making other significant cuts due to the large decreases in its revenue streams, there is no justification for the Lodge's wage offer …."[71]

But the point is that the discussion of increases over and above the across-the-board percentage increases further resulting from step movements was used in *City of Chicago* mainly to *reject* one party's offer. As has been ex-

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[68] *Id*. at 19, 25.
[69] *Id*. at 30.
[70] *Id*. at 33-34.
[71] *Id*. at 34.

plained, *City of Chicago* is different from this case because that was not final offer arbitration and the contract in that case gave authority for fashioning a wage rate different from either party's final offer. The appropriate wage rate established in that case was, as here, driven largely by the CPI statutory factor in Section 14(h)(5) of the IPLRA.[72]

The step discussion was again used in *City of Chicago*, but only to show that "... a 10% wage increase over this five year Agreement [the wage rate established by the award] might at first seem small to some ... [b]ut in reality, just in terms of numbers, given the step movements built into the salary schedule that most officers will receive over the life of the Agreement, the increases under this Agreement are still significant."[73]

The cost-of-living factor was the driver in *City of Chicago* in the fashioning of a wage rate different from the parties' proposals in that case. The real impact through the step analysis was used in that case to reject one offer and to explain the reasonableness of the wage rate eventually established by the award. The step analysis was not the driving factor for deciding the dispute — it only explained why one offer should be rejected and why the established rate set by the award was more than what it appeared to be for the individual Chicago police officers.[74]

Unlike *City of Chicago*, this is final offer arbitration and I cannot fashion something different from one of the two proposed offers. The statutory cost-of-living factor remains the driving factor in this case. The fact that numbers of

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[72] *Id*. at 36-44.

[73] *Id*. at 48-51 [emphasis omitted].

[74] *See* the discussion *infra* at VII(3) concerning the Union's request for an increase in the uniform allowance where increased step movements were considered as a reason to *reject* the Union's proposal.

employees will do better than 8.5% over the length of the Agreement due to step movements or longevity increases cannot change the result that the Union's 8.5% wage offer is the one that, in my "... opinion ... more nearly complies with the applicable factors prescribed in subsection [14](h)" of the IPLRA as required by Section 14(g) of the IPLRA. The total across-the-board increases offered by the parties are the numbers which must be the focus of the analysis in the first instance.

Also with respect to step movements, the County argues that based upon its analysis of employee step movements, "... in some years the average value of the step increases exceeds the across-the-board wage increase offered by both the Joint Employers and AFSCME."[75] I will assume as the County asserts that "... the value of each step movement in the pay plans for the units at issue is 4.5%."[76] Taken to its logical end result, if the result of previously bargained-for or established step movements or longevity increases alone are to be the driving factors in these cases, then the County could offer zero percentage increases across-the-board for the entire four years of the Agreements; assert that some employees will receive two step movements over the life of the Agreements; and argue that is the technical equivalent of a 9.0% wage increase which is to be used for determining the propriety of a wage offer — a conclusion that flows from a theoretical zero percent wage offer. Again, according to the County, "[a] step increase is nothing more than another name for a wage increase."[77] In theory, that kind of argument could be extended out so that as long as there are sufficient numbers of employees making step movements,

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[75] County Post-Hearing Brief at 20.

[76] *Id*. at 19 [citing Schmalz' testimony, Tr. I at 45].

[77] *Id*. at 19.

there never need be another across-the-board wage increase because of built in percentage increases resulting from step or longevity movements. The County does not specifically argue this position, but that is the logical end result of the position it takes.

Without more substantial support from the IPLRA for such a result and with the CPI increasing, albeit slowly, I cannot make such a finding in this case that could justify zero percent wage offers — even in these economically distressed times. Analysis of step and longevity movements can and should be used to explain the impact of wage increases sought, but the statutory factors in the IPLRA must be the determining factors for deciding the actual across-the-board percentage increases ultimately chosen.

3. Conclusion on the Wage Offers

As discussed above, I have chosen the Union's wage offer of 8.5% rather than the County's offer of 7.0% for the four year Agreements. That offer is chosen because the hard data from on the CPI for the almost first two years of the Agreements which have passed shows an increase in the CPI of 3.8% and the Union's offer for that period at 3.5% and the County's offer at 3.0%, which makes the Union's offer closer to the cost-of-living changes, yet still below the increase in the CPI. Coupled with the uncertainty in the forecasters' visions for the out years of the Agreements (2011 and 2012) and the fact that the parties are only 1.0% apart for those two years, the Union's overall offer of 8.5% is the more reasonable under the applicable factors in Section 14(h) of the IPLRA — particularly because I am limited in this final offer interest arbitration to select one of the two total wage proposals.

Because of the numbers of employees involved and the pattern the selected wage rate may set County-wide (and the impact which may result with

respect to layoffs), although the percentages may be small, the numbers in dollars and potential consequences of having to pay for those increases are quite significant. However, without getting lost in the minutiae of the arguments and analysis, one has to step back and look at the entire picture — over the life of a four year period, the parties were 1.5% apart and the Union's final offer was 8.5%. In years before this recession, if I stated that a union was making an 8.5% proposal for wage increases over a four year contract, some might respond that I got the parties confused and that it was the employer who made that offer. But that is not the case here and the economy in prior years is not the economy of today. From the prior awards I have issued since the economy went into deep recession in 2008 which have been discussed in this award, the wage offers and differentials in those cases and this matter have been as follows:[78]

Case	Contract Duration	Union Offer	Employer Offer	Difference	Result
Boone County	4 years	17%	12.5%	4.5%	Employer's offer selected
Illinois State Police	4 years	10.5% rank differential in addition to 15.25% already granted wage increase	7.5% rank differential in addition to already granted 15.25% wage increase	3.0%	Employer's offer selected
North Maine	3 years	10.5%	9.5%	1.0%	Employer's offers selected
County of Rock Island	3 years	11.35%	9.0%	2.35%	10.75%
City of Chicago	5 years	19.25% (over four years)	5.0% (over five years)	Minimum 14.25%	10% over 5 years
Cook County	4 years	8.5%	7.0%	1.5%	Union's offer selected

[78] *Boone County* at 3-4; *Illinois State Police* at 3-4; *North Maine* at 4; *County of Rock Island* at 4; *City of Chicago* at 25.

The above comes from cases where I had to discuss in detail the impact the economy has had on the collective bargaining process and interest arbitrations. This is by no means a comparability discussion. Comparability analyses do not work in this economy and the units of government in those awards cannot all be considered comparable to Cook County. But what jumps out here is that in this case, the Union's final offer was the lowest; with the exception of one case (*North Maine*), the difference in the final offers between the parties was the lowest; and the result of my selection of the Union's 8.5% offer in this case was the lowest percentage wage offer chosen. What this says to me is that the Union's final offer which has been selected shows that the Union understood the impact this recession has had on the County and took that into account when making its final wage proposal. The County certainly did its best by coming up to 7.0%. The challenges the County faces and the consequences which may flow are substantial (as they would have been had the County's 7.0% wage offer been selected). However, given the constraints I have through the final offer interest arbitration process of having to select one of the two final offers on wages, I find that the Union's 8.5% wage increase is required as the Section 14(h) factors in the IPLRA are applied — even in these tortured economic times.

2. Health Care

A. The Parties' Final Offers

The County seeks to implement changes in plan design and prescription payments effective December 1, 2011.[79] The Union opposes those changes.

[79] County Revised Final Offer dated July 30, 2010, Proposal No. 2.

B. Discussion

Kenneth Maginot is a partner in the Mercer consulting firm whose function is to assist employers with designing and pricing out medical benefits packages.[80] At the hearing, Maginot discussed the County's proposed changes in health care which seek to "[i]ncrease deductibles, copays and out-of-pocket maximums (HMO and PPO; medical and pharmacy) to a level that is consistent with market practice."[81] The rationale for the changes is that "[b]enchmarking data shows that Cook County's plan designs are consistently more rich than peer groups."[82]

The changes sought by the County will, by Maginot's estimates, result in an annual cost avoidance of $9.9 million for HMO medical design; $5.2 million for prescription drug plan design; $3.0 million for PPO medical design; and $1.5 million for PPO prescription drug plan design.[83]

According to Mercer's analysis:[84]

* * *

> Cook County's health care plan designs are richer than benchmarked norms - this results in unsustainable overall program costs that are significantly higher than benchmarked norms.

* * *

On cross-examination, Maginot testified about the conclusion that the present Health Care Plan design"... results in unsustainable overall program costs ....":[85]

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80 Tr. III at 78.

81 County Health Care Presentation at 28.

82 *Id*.

83 *Id*. at 29-32. Tr. III at 79-97.

84 County Health Care Presentation at 3.

85 Tr. III at 98-99.

Q. … What did you mean by the use of the term "unsustainable"?

A. Typically what I mean is that when it's unsustainable, there's not enough revenue coming in for an employer to offset the additional costs of benefit program increases.

Q. Okay. So you did some sort of an analysis of the Cook County property tax base in relation to your conclusion?

A. No.

Q. Did you do any analysis of the revenue stream in Cook County in making this conclusion?

A. No.

Q. Did you look at, you know, the history of spending and collecting taxes in the County?

A. No.

Q. So how did you conclude that it was unsustainable?

A. You know, given the rate of increases associated with those, which would typically be more than what we would perceive tax rates could go up or revenues could go up.

Q. You don't really know whether it's sustainable?

* * *

[A] No.

Because this is a change which is to take effect in the out years of the Agreements, projections hade to be made by Maginot for the County's health care proposal:[86]

Medical/Prescription Drug Cost Annual Trend Forecast

	FY 2010 (Actual)	**FY 2011** (Forecast)	**FY 2012** (Forecast)	**FY 2013** (Forecast)
HMO Composite	10.2%	8.7%	9.3%	9.5%
PPO Composite	6.4%	9.5%	10.0%	10.5%
HMO Medical	11.5%	8.6%	9.4%	9.6%
HMO Rx	1.0%	9.0%	9.0%	9.0%
PPO Medical	7.4%	9.6%	10.3%	10.9%
PPO Rx	1.0%	9.0%	9.0%	9.0%

With respect to the forecasts for FY 2011 and beyond, the following caveat is found in the Mercer analysis:[87]

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86 County Health Care Presentation at 33.

87 *Id*.

> Mercer Actu[a]rial Guidance for Fully-Insured HMO and PPO; the trends used for forecast are estimates only and subject to change.

Maginot also testified about the forecasts:[88]

> A. … [W]hat I'm providing is Mercer's best actual guidance right now in terms of subsequent years, fiscal year '11, '12, and '13, in terms of what we would expect healthcare trends to be. … [T]his is our best guidance.
>
> I have to caveat it that this is guidance at this point. There's a lot of variables in the healthcare arena right now, including healthcare reform that could impact these numbers. ….

The burden is on the County to justify the health care changes it seeks. The County has not met that burden.

First, a premise of the proposed change was Mercer's determination that "Cook County's health care plan designs are richer than benchmarked norms - this results in unsustainable overall program costs that are significantly higher than benchmarked norms."[89] However, as shown by the cross-examination of Maginot quoted above, when asked if he actually knew whether the health care plan design was, in fact, "unsustainable", Maginot candidly admitted "no".[90]

Second, the County's proposed changes are to take effect December 1, 2011 — at the commencement of the third year of the Agreements. As a result, forecasts had to be used. Mercer's forecasts stated "the trends used for forecast are estimates only and subject to change".[91] And Maginot testified about those forecasts that "I have to caveat it that this is guidance at this point … [t]here's a lot of variables in the healthcare arena right now, including healthcare reform that could impact these numbers."[92]

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88 Tr. III at 96-97.

89 County Health Care Presentation at 3.

90 Tr. III at 98-99.

91 County Health Care Presentation at 33.

92 Tr. III at 97.

Forecasts used to underpin a change in health care which are "subject to change" at a time when "[t]here's a lot of variables in the healthcare arena right now, including healthcare reform that could impact these numbers" is not, in my opinion, sufficient to meet the County's burden. The rationale behind the proposed changes is too speculative. In a similar situation, I rejected proposed changes in health care. *See Boone County, supra* at 28.

> ... [G]uessing as the Employer has done for 2010 with the resultant dramatic percentage increases simply cannot be the basis for further increases. Add to the guesswork involved that we have no idea where the economy will be in 2010, the Employer's proposed further premium increases in 2010 are really too speculative to select.

Third, an increased cost to the employees for the County's health care proposal would potentially reduce the wage increase by approximately 1.6%.[93] Obviously, that reduction will vary from employee to employee, depending upon the plan an employee is enrolled in and what usage of the plan is made. However, there is an increased cost factor to the employees which could reduce their 8.5% wage increase already awarded in this matter by 1.6% — dropping that wage increase to 6.9%. As discussed *supra* at VII(1)(B), as of this writing, the CPI has actually increased by 3.8% overall and the projections for CPI increases for the out years of the Agreements are "guesswork" and "all over the map." Further, as discussed *supra* at VII(1)(B), under the Union's 8.5% wage proposal which has been selected, the wage increases in the first two years of the Agreements (2.0% effective December 1, 2008 and 1.5% effective December 1, 2009) are below the actual 3.8% increase in the CPI for that period. Given the unknowns in the future — for CPI changes, health care costs and the economy as a whole — without more of a showing by the County, it does not make

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[93] Tr. III at 71, 77.

sense at this time to impose additional health care costs which serve to decrease the particular wage increase set in this case by a potential additional 1.6%.

I am therefore faced with a proposed change which is premised on a belief that the current health care plan is "unsustainable", when Mercer could not really justify that premise; projected health care increases which are speculative in that "... the projections "... are estimates only and subject to change", with the further caveat that "[t]here's a lot of variables in the healthcare arena right now, including healthcare reform that could impact these numbers"; and the potential reduction of the wage increase of 8.5% by as much as 1.6%, which would have the potential effect of driving down that wage increase which thus far lags behind the actual increase in the CPI. Given those considerations, the Union's proposal for no change to health care is therefore adopted.

3. Uniform Allowance

A. The Parties' Final Offers

The Union seeks an increase in uniform allowance from $650 per year to $850 per year (effective December 1, 2010) and $950 per year (effective December 1, 2011) and also seeks that the County be responsible for issuance and replacement of soft body armor upon expiration of warranty or being unfit for use.[94]

The County opposes this proposal.

[94] Union Revised Final Offer dated August 6, 2010, Proposal No. 3; Tr. II at 28-33.

B. Discussion

According to the Union, the uniform allowance has not increased since the late 1990's.[95] For the sake of discussion and to give the Union the benefit of the doubt, I will assume that the cost of maintaining uniforms has increased since the last change in the uniform allowance benefit. With the burden on the Union to demonstrate why the uniform allowance should be increased, I find the Union has not carried that burden.

City of Chicago, supra, addressed a similar issue. There, the FOP's request for an increase in the uniform allowance was rejected because of the existing economic conditions facing the City of Chicago and the fact that whether or not individual officers moved through steps during the life of the contract, the wage increases awarded kept all officers ahead of the projected cost-of-living increases for the duration of the contract. *City of Chicago, supra* at 62-65. Under those circumstances, it was found that the increases granted "... cannot justify additional compensation in the form of added uniform allowance." *Id*. at 65.

The same analysis applies to this case. The economic conditions have not really changed much since April 2010 when *City of Chicago* issued. Further, the Union's wage proposal which has been adopted better keeps the employees at pace with changes in the cost-of-living than does the County's wage offer. Assuming no step or longevity movements, an employee covered by the Agreements receiving an 8.5% wage increase over the life of the Agreement, actually receives a higher wage increase because wage increases have a compounding effect yielding a higher percentage — the periodic increases are ap-

[95] Tr. II at 28.

plied on top of previously granted increases. For those employees who achieve step or longevity movements, those actual percentage increases will be higher depending on the number movements during the life of the Agreements. Further, aside from adopting the Union's higher wage offer, I have rejected the County's efforts to impose health care increased costs on the employees. As in *City of Chicago, supra*, the Union "... cannot justify additional compensation in the form of added uniform allowance." The Union's proposal is therefore rejected.

4. Scheduling

A. The Parties' Final Offers

The County seeks to change the schedule for patrol officers under the Police Officers Agreement from the current "four-and-ten" system to a "six-and-two" system.[96]

The Union opposes that change.

B. Discussion

The County seeks to change the schedule worked by the non-specialized patrol officers from the current schedule under which officers work four or five consecutive ten hour days followed by three or four days off to a schedule where officers work six consecutive eight hour days followed by two or three days off.[97]

Deputy Chief of Patrol Matthew Walsh described the current four-and-ten schedule and the six-and-two which the County seeks:[98]

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[96] County Final Offer dated June 1, 2010, Proposal No. 16. *See also,* Tr. III at 107-108.

[97] County Pre-Hearing Brief at 13-14.

[98] Tr. III at 110. Examples of the four-and-ten is shown as County Exhs. 3, 4. Tr. 118. The six-and-two is demonstrated by County Exh. 5. Tr. III at 120.

> A. The current four-and-ten system is a 40-hour workweek based on a Sunday through Saturday that identifies the week. Within that week officers ... either work 40 hours within that week, but sometimes they'll work a five on, four off; a five on, three off; and a four on, four off combination throughout that time.
>
> * * *
>
> The six-and-two, once again, is based on a Sunday through Saturday workweek. Within that workweek, 40 hours are worked, however, based on the Sunday through Saturday week, you might work six days in a row, have two off, and when you get to the weekends, you work a six-and-three where you get three days off. You ... take a Friday, Saturday, Sunday and a Saturday, Sunday, Monday.

The four-and-ten schedule was unilaterally implemented in 1993 by the Sheriff due to a desire to curtail overtime.[99] According to Deputy Chief Walsh, under the current four-and-ten system "... only 57 percent ... of all personnel assigned to patrol are scheduled to work ... per day ... [while] under the six-and-two, 71 percent of personnel would be scheduled to work per day."[100] According to Deputy Chief Walsh, the result of the change would cause more officers to be on the street, thus better serving the public.[101] Under the current four-and-ten schedule, officers get weekends off about every three weeks; while under the proposed six-and-two schedule officers get weekends off every six weeks.[102]

Deputy Chief Walsh further testified that the four-and-ten schedule requires staffing by approximately 200 officers, while the six-and-two schedule requires a staffing level of approximately 170 officers, but he only was able to bid 180 positions due to staffing allocations made by the Sheriff.[103] However, Deputy Chief Walsh testified that with officers out due to injuries and some re-

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[99] Tr. III at 111.

[100] Tr. III at 112.

[101] *Id.*

[102] Tr. III at 131.

[103] Tr. III at 113.

cent retirements, "... we have approximately 169."[104] Further, according to Deputy Chief Walsh, staffing has been dropping in the past six years; there is no real likelihood of getting more officers; the need for patrol officers is increasing as shown by increased calls for service and the Sheriff having to assume all policing responsibilities for the Village of Ford Heights, with a potential of having to police more communities; and it is not feasible to transfer officers from specialized units due to increased needs of those units.[105]

The Sheriff's General Counsel Peter Kramer testified that subsequent to Sheriff Dart's taking office in 2007, budget cuts caused the Sheriff to seek a change in scheduling.[106] The Union opposed the change and the dispute was taken before Arbitrator George Fleischli.[107] In *County of Cook and the Sheriff of Cook County and AFSCME Council 31*, Gr. No. 2007-10-30687 (November 26, 2007), Arbitrator Fleischli rejected the County's desire for a mid-term change of schedule (*id*. at 17):

> In the view of the arbitrator, in order to justify the unilateral imposition of the 8 & 10 Work Schedule during the term of the Agreement and do so without offering a quid pro quo, the Employer ought to be required to prove: that there is a compelling operational need for the change; that its proposal is designed to meet that compelling operational need with the least possible impact on the employees affected; and that the Union has been unwilling to recognize the compelling operational need and make realistic offers of other possible ways to deal with it.
>
> There has been no showing of the existence of a compelling operational need. The Employer has not demonstrated that the existing 4/10 Work Schedule is unworkable or imposing a serious hardship on its ability to function. The Employer has hinged its case on a desire for a more efficient use of manpower. Under its proposed schedule, it would be able to reduce the number of Patrol Officers needed to cover the work schedule.

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[104] Tr. III at 126.

[105] Tr. III at 113-117. *See also,* County Exhs. 6 and 7 showing the drop in the number of officers and increase in the number of calls. Tr. III at 121-123.

[106] Tr. III at 136-137.

[107] Tr. III at 137.

General Counsel Kramer testified that after the Fleischli award issued, "... Ford Heights basically went bankrupt and we took over the police department ...."[108] The Sheriff again approached the Union seeking a schedule change, which was rejected and caused the matter to be brought before Arbitrator Martin Malin in another interest arbitration.[109] In *Cook County and Sheriff of Cook County and AFSCME Council 31*, No. 2008-11-32965 (2009), Arbitrator Malin rejected the proposed change, deferring to the pervious decision by Arbitrator Fleischli (*id*. at 9):

> The parties disagree over whether I should follow Arbitrator Fleischli's interpretation of Section 3.2 and apply it to the instant dispute. Of course, in labor arbitration there is no binding rule of stare decisis. Nevertheless, an arbitrator who refuses to defer to an interpretation of the contract rendered in a final and binding arbitration between the parties undermines labor relations stability. At best, the arbitrator who does not defer to the prior interpretation invites the parties to continue their fight the next time the issue arises and proceed to a third arbitrator for a "rubber match." At worst, the arbitrator injects chaos into the parties' relationship. Consequently, an arbitrator should defer to the prior award's interpretation as long as the interpretation is reasonable regardless of whether the arbitrator would have reached the same result had he been writing on a clean slate.
>
> * * *

Noting that the disputes in the arbitration before him and before Arbitrator Fleischli involved mid-term contract changes, Arbitrator Malin stated (*id*. at 10-11, citations omitted):

> Arbitrator Fleischli observed that the record before him contained no evidence of bargaining history. The record before me is similarly lacking in evidence of bargaining history. Arbitrator Fleischli interpreted Section 3.2 against the background of external law which requires negotiation, and if necessary arbitration, over midterm proposals to change wages, hours and working conditions. *Id*. This approach of interpreting contract language in light of the external law, is not only reasonable but is one that I have supported in my writings elsewhere. ...
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> * * *
>
> ... [Arbitrator Fleischli] synthesized the individual sentences of Section 3.2 in a way that gave effect to all contract language in a logical and coherent manner.

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[108] Tr. III at 138.

[109] *Id*.

> His determination that section 3.2 essentially provides for midterm interest arbitration except for changes in daily work hours for operational reasons is most reasonable and I defer to it.
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> * * *
>
> ... My task is to evaluate the record before me to determine whether the Employers have carried their burden to establish a compelling operational need. ...
>
> * * *
>
> After carefully considering the record, however, I am unable to find that the Employers have carried their burden of proving compelling operational need. There is no dispute that the proposed schedule will achieve improvements in efficiency. But, as Arbitrator Fleischli held, improving efficiency does not by itself establish compelling operational need.

According to General Counsel Kramer:[110]

> Q. ... Now, in your view, what are some of the things that are wrong with the four-and-ten scheduling system?
>
> * * *
>
> A. Well, historically there's nothing wrong with it if we had enough officers. What's wrong is that we don't have enough officers to currently staff this thing efficiently.

Discussions with the Union in negotiations for the current Agreement did not yield a consensus on a change of schedule and the issue was progressed in this proceeding.[111]

Before getting to the merits of the requested change, there is a wrinkle in the manner in which this issue comes before me. Section 3.2 of the Police Officers Agreement provides:

> **ARTICLE III**
>
> **Hours of Work and Overtime**
>
> * * *
>
> **Section 3.2. Regular Work Periods:**
>
> The normal workweek shall consist of forty (40) hours in a seven (7) day work week (Sunday through Saturday), with two (2) or more consecutive days off. Any changes in hours worked or work schedules will be discussed with the Union Representatives at least sixty (60) days prior to implementation of such change, and shall not result in the loss of any economic benefit currently offered by the Employer. In the event such discussion does not result in an agreement on the contemplated changes in the hours worked, work schedules or loss of economic

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[110] Tr. III at 141-142.

[111] Tr. III at 138-141.

> benefits, the Union reserves the right to move the issue directly to impasse arbitration, Section 12.10 of this Agreement. The Employer reserves the right to modify daily work hours for operational reasons. However, the Employer will not modify daily work hours solely to avoid the payment of overtime.

The County argues that "... the burden of proof rests with the Union to demonstrate that a work schedule change is arbitrary and capricious or lacks a business justification ... [but] two arbitration decisions under Section 3.2 have put the burden on management and for all practical purposes have imposed a standard of business necessity in the strictest sense."[112] And, indeed, the two awards referenced above by Arbitrators Fleischli and Malin arose in the context of disputes under Section 3.2 of the Police Officers Agreement, but then were treated as impasse proceedings, with Arbitrator Fleischli stating a need for the County to demonstrate " ... that there is a compelling operational need for the change; that its proposal is designed to meet that compelling operational need with the least possible impact on the employees affected; and that the Union has been unwilling to recognize the compelling operational need and make realistic offers of other possible ways to deal with it" and Arbitrator Malin holding that for prior binding arbitration awards "... an arbitrator should defer to the prior award's interpretation as long as the interpretation is reasonable regardless of whether the arbitrator would have reached the same result had he been writing on a clean slate."

This is not a grievance arbitration determining whether the terms of the Agreement have been violated. Nor is this a dispute concerning whether the County can make mid-term contract changes. Those were the issues before Arbitrators Fleischli and Malin. This is an interest arbitration which establishes terms of the Agreement. The standards are completely different. The

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[112] County Pre-Hearing Brief at 15-16.

questions before Arbitrators Fleischli and Malin were whether the mid-term schedule changes sought by the Sheriff were permissible under Section 3.2 of the Police Officers Agreement. Arbitrators Fleischli and Malin applied burdens used in similar contract disputes and ruled against the County. The question before me is not whether mid-term schedule changes are permissible under Section 3.2. The question before me in this interest arbitration is whether the current four-and-ten schedule should be replaced by a six-and-two schedule through the interest arbitration process. The results of the two different arbitration procedures (grievance and interest arbitration) may end up the same and indeed, in the end, the analysis may appear to be similar. However, the burden in this proceeding is quite different than the burden in the disputes before Arbitrators Fleischli and Malin. Here, because this is an interest arbitration and the County is seeking the schedule change as part of the interest arbitration process which establishes provisions of the Agreement, the County clearly bears the burden and that burden is the one I have described before — *i.e.*, the County must show that the current system is broken. The County has not done so.

In brief, the facts show that in 1993 the Sheriff unilaterally implemented the present four-and-ten schedule to curtail overtime; as budget difficulties arose, there were insufficient patrol officers allotted to meet the needs of that schedule; and the Sheriff twice tried to change the schedule mid-term in the Agreement, which was taken to arbitration under Section 3.2, without success on the Sheriff's part.

The four-and-ten schedule works well from the County's perspective if the County and the Sheriff allocate sufficient patrol officers to fill the schedule. As General Counsel Kramer testified, "... there's nothing wrong with it if we had

enough officers ... [w]hat's wrong is that we don't have enough officers to currently staff this thing efficiently."[113] The County and the Sheriff have made a decision that they will not provide sufficient officers to staff the four-and-ten schedule so that it works as well as it did when the Sheriff unilaterally implemented that schedule in 1993. Because of that decision, the four-and-ten schedule may now not work well from the County's perspective. But a scheduling system not working well is not the same as a scheduling system that is broken — particularly when the reason the system is not working well for the County and the Sheriff is because of staffing decisions made by the County and the Sheriff to not provide sufficient patrol officers for that schedule which the Sheriff originally implemented on a unilateral basis. The County's proposal to change the scheduling system as part of this proceeding is therefore rejected.

There is a side issue raised by the County concerning Section 3.2 of the Police Officers Agreement. The County also seeks to remove the arbitration provision from that section.[114] That request is also rejected. The County's failure to prevail in the two scheduling arbitrations is no reason to cause an interest arbitrator to remove the scheduling arbitration provisions from the Agreement.

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[113] Tr. III at 141-142. The present four-and-ten schedule works well for the officers — it gives them more weekends off. *See* Tr. III at 159 (testimony of Police Officer Robert Mazar — "... the four-ten ... schedule is the happiest schedule, because every other weekend is off ... [y]ou spend more time with your families ... [w]hereas under the six-and-two schedule, there's a length of time -- there's about seven weeks before there's a weekend.").

[114] County Final Offer dated June 1, 2010, Proposal No. 17; County Post-Hearing Brief at 32-33.

5. Affidavits in Disciplinary Investigations

A. The Parties' Final Offers

The Union seeks to amend Section 11.3 (Disciplinary Rights) of the Local 2264 Police Officers Agreement to add language as follows:[115]

> **ARTICLE XI**
>
> **Discipline**
>
> * * *
>
> **Section 11.3. Disciplinary Rights:**
>
> The Employer shall not take any disciplinary action against an employee without just cause. Employees will be disciplined and be entitled to representation consistent with the Bill of Rights, 50 ILCS 725/1 et seq. ...
>
> * * *
>
> Except as provided in the Bill of Rights, anyone (including other employees) filing a complaint against a sworn police officer must have the complaint supported by a sworn affidavit. The affected officer will receive a complete copy of the signed affidavit and any other documents upon notification of discipline procedures and/or investigations being instituted against the officer.

The County opposes that change.

B. Discussion

According to the Union, in proceedings before the Cook County Sheriff's Merit Board and under the grievance procedure in the Agreement, officers have been disciplined on complaints of misconduct in circumstances where a sworn and notarized affidavit required by the Uniform Peace Officers Disciplinary Act, 50 ILCS 725/1 *et seq.*, did not exist at the time of the interrogation and investigation of the officers and those affidavits were not given to the officers.[116]

50 ILCS 725/3.8(b) of the Uniform Peace Officers Disciplinary Act (also referred to as the "Bill of Rights") provides that "[a]nyone filing a complaint against a sworn peace officer must have the complaint supported by a sworn

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[115] Union Final Offer dated June 1, 2010, Proposal No. 18 [added language underscored].

[116] Tr. II at 4-8.

affidavit." As quoted above, Section 11.3 of the Local 2264 Agreement similarly provides that "[e]xcept as provided in the Bill of Rights, anyone filing a complaint against a sworn police officer must have the complaint supported by a sworn affidavit."[117] In the example given at the hearing, the Union filed a motion to dismiss a complaint before the Sheriff's Merit Board involving a 60-day suspension given to an officer where, according to the Union, "... there does not appear to be any such supporting sworn affidavit[s] ...."[118] The Sheriff opposed that motion and provided an affidavit which post-dated the initial interrogation and investigation (and was even dated after the Union's motion to dismiss was filed).[119] The discipline was nevertheless upheld by the Sheriff's Merit Board.[120] In another example cited by the Union, a presently pending 30-day suspension was grieved and the issue of a lack of an affidavit was raised in a lower step of the grievance procedure.[121]

The Union has not met its burden to show that the requested change in the discipline process is required.

First, as it must, the Union concedes that the Uniform Peace Officers Disciplinary Act "... does not specifically provide that the copy [of the affidavit] must be provided."[122]

Second, in my capacity as an interest arbitrator formulating the terms of the Agreement, I have no ability to set procedures in proceedings before the

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[117] Sheriff's General Order 04-01 at V(d) provides that "[i]f the complainant refuses or fails to support his/her complaint with a sworn affidavit, his/her complaint shall be invalidated." Exhibit 1 attached to Union Exh. B.

[118] Union Exh. B at 2.

[119] Union Exh. C.

[120] Exhibit 6 attached to Union Exh. B.

[121] Union Exh. D.

[122] Tr. II at 9.

Sheriff's Merit Board. Indeed, in Section 12.2 of the Local 2264 Agreement, the Agreement provides that "... [m]atters which fall within the jurisdiction of the Merit Board are not challengeable as a grievance ... [h]owever, discipline of thirty (30) days or less may be grieved as outlined in Section 12.4 of this Agreement." If the parties' Agreement provides that a grievance arbitrator could not consider the dispute relied upon by the Union which made its way to the Sheriff's Merit Board (a suspension greater than 30 days), how do I as an interest arbitrator have any authority to formulate procedures for a forum deciding a dispute over which a grievance arbitrator under the Agreement would not have authority to decide? I have no such authority.

Third, but the Union presents a matter (the 30-day suspension) that is currently working its way through the grievance procedure under the Agreement. If it gets that far, the Union is obviously free to raise the affidavit question to a grievance arbitrator hearing that grievance. If that case does not make it to arbitration and the same issue arises again, the Union has the same avenue of relief before a grievance arbitrator — *i.e.*, to challenge the discipline on grounds that the affected officer did not receive a complete copy of a supporting signed affidavit and any other documents upon notification of discipline procedures and/or investigations being instituted against the officer. I obviously express no opinion on the merits of the Union's position in any pending (or future) grievance on that issue. That is for the grievance and arbitration process, not the interest arbitration process.

But the point is that there are avenues of relief for the Union's complaint for those matters which can be processed under the grievance procedure in the Agreement (suspensions of 30 days or less). And with respect to matters that fall under the jurisdiction of the Sheriff's Merit Board (discipline greater than

30 days), the Union is free to again press its position in that forum and, if necessary, in an appeal to a court of competent jurisdiction in order to test whether the Uniform Police Officers Disciplinary Act requires that discipline cannot be imposed if the affected officer does not receive a complete copy of the signed affidavit and any other documents upon notification of discipline procedures and/or investigations being instituted against the officer.

6. Acting Up Pay for Correctional Lieutenants

A. The Parties' Final Offers

The Union seeks to include a provision in the Local 2226 Agreement covering Correctional Lieutenants which provides for acting up pay (10%) in certain situations where those officers function as unit commanders — positions normally assigned to Captains.[123] According to the Union there is no acting-up language in that Agreement.[124]

The County opposes this proposal.

B. Discussion

This is a break-through item sought by the Union. No language exists in the Agreement that provides for Correctional Lieutenants to receive any form of acting up pay. As has been explained throughout this process, while perhaps the proposal is a good idea from the Union's standpoint, it is not the function of an interest arbitrator to impose provisions unless an existing condition is broken. This proposal falls squarely into that concept. The Union's proposal is therefore rejected.

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[123] Union Final Offer dated June 1, 2010, Proposal No. 13; Tr. II at 9-13.
[124] Tr. II at 12.

7. De- and Re-Deputization

A. The Parties' Final Offers

The Union seeks change the language in Section 14.3 of the Local 3692 Agreement covering Correctional Sergeants addressing de- and re-deputization as follows:[125]

> 1. De-deputization is a process wherein the sergeant ~~Officer~~ is required to relinquish his/her deputy card and/or credentials (the affected sergeant ~~officer~~ shall be allowed to keep their badges as long as they are employed). No sergeant ~~officer~~ covered herein shall be subject to De-deputization except for just cause~~.~~, i.e. in cases where a sergeant a) has failed to qualify with a weapon at a scheduled firearms training b) while under investigation for a capital offense while working, such as the alleged abuse of an inmate, or c) for alleged criminal conduct, or d) for alleged sexual abuse/misconduct.
>
> 2. Re-deputization — all sergeants who have been de-deputized and who have either served their suspensions or who are exonerated or whose disciplinary matter had been otherwise disposed of, shall have their credentials and deputy card returned immediately following such action or disposition ~~except for just cause~~ and the Union shall be notified in writing in all cases where a sergeant has been re-deputized. Sergeants will not be de-deputized for proof status or for use of medical time.

The County opposes this proposal.

B. Discussion

In support of its proposed changes, the Union cites examples where Sergeants were de-deputized, the underlying issues causing de-deputization were disposed of and, according to the Union, inordinate delays followed in re-deputizing those individuals.[126] Specifically, the Union points to the de-deputization of Sergeant Robert Guzman on allegations of physical abuse of an inmate; the determination in November 2005 by the State's Attorney that no

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[125] Union Final Offer dated June 1, 2010, Proposal No. 23; Tr. II at 13-18. Comparison of the written proposal to the terms of Section 14.3(E) of the Local 3692 Agreement shows the language changes as reflected above, which may be a some variance from the written proposal.

[126] Tr. II at 14-18.

criminal charges were warranted; the rescinding of a 29-day suspension from the incident by award of Arbitrator Fleischli dated August 28, 2007 as being untimely imposed; Sergeant Guzman's October 20, 2009 request to be re-deputized; a November 13, 2009 letter from Department of Corrections General Counsel Terence Coughlan responding to a grievance after a third level hearing that "[t]he above referenced grievance already had an arbitration ruling ... [t]herefore, it is hereby decided that your re-deputization is sustained"; and the Union's contention the Sergeant Guzman "... has not been redeputized, and it is now August of 2010."[127] The Union points to another example involving Sergeant Christopher Young who was de-deputized and given a 10-day suspension in 2008 as a result of allegations of trespass; a not guilty finding on the criminal charge; the rescinding of the 10-day suspension from the incident by award of Arbitrator John Fletcher dated July 13, 2010 and the assertion that Sergeant Young "... has not been redeputized by the Department of Corrections and the Office of the Sheriff."[128]

The Union has not carried its burden. The existing process of de- and re-deputization is not broken.

First, as it now reads, Section 14.3(E)(2) of the Local 3692 Agreement provides that "... all sergeants who have been de-deputized and who have either served their suspensions or who are exonerated or whose disciplinary matter had been otherwise disposed of, shall have their credentials and deputy card returned *immediately* following such action or disposition except for just cause"

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[127] Tr. II at 14-16; Union Exh. F (including Arbitrator Fleischli's award in *County of Cook and the Sheriff of Cook County and AFSCME Council 31 (Guzman).*

[128] Tr. II at 16-17; Union Exh. G (Arbitrator Fletcher's award *in County of Cook/Sheriff of Cook County and AFSCME Council 31 (Young)).* The Union contends that there are "... three or four other people who fit into this exact situation ...." Tr. II at 18. *See also*, Union Exh. I; Tr. II at 22-24.

[emphasis added]. If a Sergeant is of the opinion that his or her credentials and deputy card have not been "... returned immediately ...", that Sergeant can utilize the existing grievance and arbitration process under the Agreement in Article XII — a process which Sergeant Guzman has already set in motion.[129] Thus, for these kinds of disputes, there is an existing process for correcting any perceived violation of the requirement that credentials be "... returned immediately ...."

Second, but the Union points out that there are other ramifications flowing from a delayed re-deputization. According to the Union:[130]

> MR. YOKICH: ... The de-deputization is the process where an officer that is suspected of misconduct is no longer entitled to use their weapons credential. And the impact in being de-deputized is that it limits the jobs that you are eligible to perform at the jail, it limits your ability to bid on certain job openings at the jail, and it also can severely constrict your secondary employment because you no longer have the right to carry a weapon.

The short answer to that argument is that it is well-established that in formulating remedies, grievance, arbitrators have broad discretion, which includes making "whole" employees who have suffered damages as a result of a violation of a collective bargaining agreement.[131] That broad remedial author-

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[129] *See* Union Exh. F at 1 showing that Sergeant Guzman's request for re-deputization is in the grievance pipeline and has been sustained short of arbitration.

[130] Tr. II at 14.

[131] *See United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960):

> When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency.

See also, Local 369 Bakery and Confectionery Workers International Union of America v. Cotton Baking Company, Inc., 514 F.2d 1235, 1237, *reh. denied*, 520 F.2d 943 (5th Cir. 1975), *cert. denied*, 423 U.S. 1055 and cases cited therein:

> In view of the variety and novelty of many labor-management disputes, reviewing courts must not unduly restrain an arbitrator's flexibility.

[footnote continued]

ity to make an employee "whole" includes restoration of the *status quo* and the arbitrator's ability to put the aggrieved employee back to where the employee was before a demonstrated contract violation and to compensate that employee for damages.[132]

Thus, in the appropriate case, through the broad remedial authority of an arbitrator, the egg can be unscrambled and the adversely impacted employee can be made completely "whole". Given the language in Section 14.3(E)(2) that "... all sergeants who have been de-deputized and who have either served their suspensions or who are exonerated or whose disciplinary matter had been otherwise disposed of, shall have their credentials and deputy card returned *immediately* following such action or disposition except for just cause" [emphasis added]; the ability to process the kinds of disputes relied upon by the Union as examples in support of its proposal through the griev-

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[continuation of footnote]

Additionally, *see Eastern Associated Coal Corp. v. United Mine Workers of America*, 531 U.S. 57, 62 (2000) [citations omitted]:

> ... [C]ourts will set aside the arbitrator's interpretation of what their agreement means only in rare instances. ....

Finally, *see* Hill and Sinicropi, *Remedies in Arbitration* (BNA, 2nd ed.), 62 ("... [M]ost arbitrators take the view that broad remedy power is implied ....").

[132] *See e.g., Wicker v. Hoppock*, 73 U.S. (6 Wall.) 94, 99 (1867)]:

> The general rule is, that when a wrong has been done, and the law gives a remedy, the compensation shall be equal to the injury. The latter is the standard by which the former is to be measured. The injured party is to be placed, as near as may be, in the situation he would have occupied if the wrong had not been committed.

According to the National Labor Relations Board's method for computing backpay, make-whole relief is not always just lost wages and benefits. *See* the National Labor Relations Board Compliance Manual (http://www.nlrb.gov/nlrb/legal/manuals/CHM3/s10512.pdf):

> Section 10536.1 Overview
>
> * * *
>
> The goal in determining backpay is the same in all cases. The [National Labor Relations] Act is remedial; when it has been violated, its intent is to restore the situation to that which would have taken place had the violation not occurred. Backpay awards are intended to make whole the person who has suffered from a violation for earnings and other compensation lost as a result of that violation. Backpay awards do not include punitive damages but may include compensable damages, such as the loss of a car or house due to the discriminatee's inability to make monthly payments as a result of being unlawfully laid off or terminated. ...

ance and arbitration process; and the broad remedial authority of a grievance arbitrator to remedy these kinds of disputes for demonstrated contract violations, the issue raised by the Union is not proper for an interest arbitrator to correct through changes in contract language. The relief the Union seeks is more appropriately handled by a grievance arbitrator on a case-by-case basis — either as a separate grievance under Section 14.3(E)(2) or by returning to the arbitrators who rescinded disciplinary actions and delays in re-deputization follow. *See e.g.*, *Guzman, supra* at 7 (where Arbitrator Fleischli ordered that Guzman "… be made whole").[133]

I obviously again express no opinion on the merits of these kinds of cases — specifically because the disputes are really grievances and not for an interest arbitrator to decide and most specifically because I have not heard the reasons from the County why delays in re-deputization occurred. The point is that the Union has brought this issue in the wrong forum. This issue is for a grievance arbitrator to decide, not an interest arbitrator.

8. Timelines for Investigations

A. The Parties' Final Offers

The Union again focuses on discipline procedures under the Local 3692 Agreement covering Correctional Sergeants and seeks to impose specific timelines for investigations.[134]

The County opposes this proposal.

B. Discussion

According to the Union, with respect to its proposed changes:[135]

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[133] The Union has not returned to the grievance arbitrators seeking further relief. Tr. II at 22.
[134] Union Final Offer dated June 1, 2010, Proposal No. 22; Tr. II at 19-20.
[135] Tr. II at 19.

> MR. YOKICH: ... [T]he problem that it is designed to address is the situation where a member of the sergeant's unit is under investigation, may not even know that they're under investigation, and because they're under investigation is not allowed to bid on lateral moves within the corrections unit.

The Union focuses on an award of Arbitrator Malin dated June 16, 2010 involving Sergeant Lalia Barber who was not allowed to bid on a position because of an open OPR file which, according to the Union, "... details the long period of time in which an investigation file remained open and prevented a sergeant from transferring to another position."[136] The Union also contends that there are other sergeants similarly situated to Sergeant Barber.[137]

In *Barber*, Arbitrator Malin sustained the Union's grievance and awarded the position to Sergeant Barber which had been denied to her because of an open OPR file:[138]

> ... The evidence cries out for an explanation as to why the OPR file remained open. In the absence of such an explanation, I am compelled to conclude that the Union has proven that the Employers' reliance on the open OPR file to deny Grievant's bid was arbitrary. The grievance must be sustained and Grievant must be awarded the position. ....

For purposes of this discussion, Arbitrator Malin also held that he would retain jurisdiction "... to resolve any dispute that may arise with respect to the remedy."[139] Thus, as discussed in detail *supra* at VII(7)(B), there are specific avenues of relief through the grievance and arbitration procedures in the Agreement to resolve these kinds disputes. For those same reasons, this proposal must be rejected.

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[136] Tr. II at 19; Union Exh. H (*Cook County and Sheriff of Cook County and AFSCME Council 31 (Barber)*, No. 2009-11-34851).

[137] Tr. II at 20.

[138] *Barber* at 8.

[139] *Id*.

9. Implementation of Discipline

A. The Parties' Final Offers

The Union seeks to amend the Agreements for Locals 3692, 2226, and 3958 to provide — as provided in the Police Officers Agreement (Local 2264) — that discipline will not be imposed for suspensions of 30 days or less until issuance of the third step grievance response denying a grievance over the suspension.[140]

The County opposes this proposal.

B. Discussion

In support of its proposal, the Union argues that there have been "... quite a few mistakes made with respect to discipline in that the Union has had quite a bit of success in persuading the Sheriff to lower the level of discipline during the grievance procedure."[141] Assuming that to be accurate, at best, this proposal falls into the category of a good idea — perhaps a very good idea — in that by delaying the actual imposition of discipline until the third step denial as in the other Agreements, the Sheriff will potentially save money by not having to compensate employees for lost days as a result of a subsequent reduction of the discipline after the original level of discipline has been served. The savings could be further increased as a result of the Sheriff's not having to pay overtime to employees who may have been utilized at that rate to fill in for employees serving suspension time which was later reduced.

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[140] Union Final Offer dated June 1, 2010, Proposal No. 9; Tr. II at 26-27. Section 11.1 of the Police Officers Agreement (Local 2264) provides that "[i]f the employee grieves a suspension of twenty nine (29) days or less, the resulting discipline will not be imposed until the Step 3 grievance response is issued.

[141] Tr. II at 27. The Union proffered a list of six instances under the Local 3692 Agreement covering Correctional Sergeants where discipline had been reduced. Union Exh. 5; Tr. II at 27.

But again, good ideas are not enough in an interest arbitration to require a change in a contract provision. The employees have the grievance procedure — one which is apparently effectively used by the Union on behalf of the employees as a result of its position that it has been often able to persuade the Sheriff to reduce disciplinary actions even after those suspensions have been served. This process is not broken. The Union's proposal is therefore rejected.

10. Rank Differential for Correctional Lieutenants

A. The Parties' Final Offers

The Union seeks an increase of 2% for rank differential for Correctional Lieutenants under the Local 2226 Agreement.[142]

The County opposes this proposal.

B. Discussion

According to the Union, in the past there was a 10% rank differential between Sergeants and Lieutenants in the Department of Corrections; because of the ability of the Sergeants to organize and bargain collectively, the Sergeants narrowed that rank differential from 10% to 4%; in the last round of negotiations the parties agreed to make up 4% of that differential, taking the rank differential between the two groups of employees to 8%; and the Union now seeks to regain that 10% level, which would be accomplished by a 2% increase in the rank differential for the Lieutenants.[143]

In *Illinois State Police, supra* at 20, as a result of the recession and poor economic conditions, I rejected a union proposal to increase the rank differen-

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[142] Union Final Offer dated June 1, 2010, Proposal No. 12; Tr. II at 25-26. The written proposal seeks a 3% increase. The Union corrected that percentage at the hearing to 2%. Tr. II at 25.

[143] Tr. II at 25-26. The Union costs this proposal at $122,000. Tr. II at 26.

tial between master sergeants and sergeants and adopted the State's proposal in a case where the master sergeants, like the Lieutenants here, were attempting to restore what they saw as an historic rank differential which was eroded:

> The bottom line here is that the ISP's rank differential offer is by no stretch of the imagination regressive. On the contrary, the ISP's offer will result in significant monetary and percentage increases for the Master Sergeants. In the economic climate now facing the parties, those kinds of significant increases must be given great weight. Given the significant increases resulting from the ISP's offer, the Union's offer, which, in real dollars shows very significant increases, simply cannot be justified in this economy or under the statutory factors found in Section 14(h) of the Act.

Here, instead of rejecting the Union's wage proposal (as was the case in *Illinois State Police*), I have *adopted* the Union's wage proposal for an 8.5% wage increase. I have also rejected the County's proposal to increase insurance costs for the employees, which could have served to reduce that wage increase by a potential 1.6% I see no reason in this economy at this time to add on this additional monetary benefit for an increased rank differential for the Correctional Lieutenants. The Lieutenants will be free to attempt make up that difference in the future, but in this economy at this time when they have received the higher of the two wage proposals made in this case and maintained their insurance benefits, the Union's request for an increased rank differential has no basis. The Union's proposal is therefore rejected.

11. Other Economic Proposals By The County

There are other economic proposals made by the County not addressed above.

A. The Parties' Final Offers

The County seeks to prevent covered employees whose spouses are also employees of the County from receiving the contractual insurance opt-out

payment[144]; a requirement that employees must use all available benefit time such as sick leave, vacation. personal days and compensatory time off before using Family Medical Leave Act time[145]; and changes preventing overtime pyramiding under the Local 2264 Agreement for circumstances as an example where guaranteed court attendance time of three hours is paid even if an officer only attends court for one-half hour and the officer then works a 10 hour day from 9:30 a.m. to 7:30 p.m. and receives 13.0 hours of straight-time pay instead of 10.5 hours.[146]

The Union opposes these proposals

B. Discussion

For these items, I return to the standard used by me as explained in the portion of this award *supra* at V where I addressed issues which were summarily resolved:

> "[T]he burden for changing an existing benefit rests with the party seeking the change ... [and] ... in order for me to impose a change, the burden is on the party seeking the change to demonstrate that the existing system is broken." In other words, those proposals were rejected because, although they may have been "good ideas", the parties could not make showings that the existing systems or conditions were broken so as to require change by an interest arbitrator as opposed the parties fixing the problems or changing the language through the negotiation process. Again, interest arbitration is a *very* conservative process and does not change contract provisions for "good ideas" — that is for the parties to achieve through the give and take at the bargaining table.

These proposals made by the County are, at best, "good ideas" from the County's perspective. However, sufficient showings have not been made to justify the changes sought.

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144 County Post-Hearing Brief at 27-28.

145 County Final Offer dated June 1, 2010, Proposal No. 5; County Post-Hearing Brief at 28.

146 County Final Offer dated June 1, 2010, Proposal No. 18; County Post-Hearing Brief at 28.

12. Other Non-Economic Proposals By The County

There are other non-economic proposals made by the County not addressed above.

A. The Parties' Final Offers

The County seeks to include a residency requirement to include in all Agreements that employees must reside in Cook County with the exception of those employees who reside outside of Cook County on December 5, 2000[147]; a zipper clause acknowledging that the parties had an unlimited right to bargain, that their agreements reached as a result of the bargaining process are embodied in the Agreements and the County has no further duty to bargain during the term of the Agreements[148]; mandatory retirement for all employees at age 65[149]; requirement for an annual fitness and agility test[150]; a limit in the Local 3692 Agreement to restrict employees from bidding on jobs more than one time per year per employee[151]; and amending Section 12.10 of the Local 2264 Agreement to provide that the Union has 10 days rather than 30 days to request arbitration of a grievance and that a grievance not timely moved to arbitration will be considered resolved in favor of the County.[152]

The Union opposes these proposals.

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147 County Final Offer dated June 1, 2010, Proposal No. 8; County Post-Hearing Brief at 29.
148 County Final Offer dated June 1, 2010, Proposal No. 10; County Post-Hearing Brief at 29-30.
149 County Final Offer dated June 1, 2010, Proposal No. 11; County Post-Hearing Brief at 30.
150 County Final Offer dated June 1, 2010, Proposal No. 12; County Post-Hearing Brief at 30.
151 County Final Offer dated June 1, 2010, Proposal No. 15; County Post-Hearing Brief at 30-31.
152 County Final Offer dated June 1, 2010, Proposal No. 19; County Post-Hearing Brief at 33-34.

B. Discussion

As with the previously discussed proposals under the standard that an existing condition must be shown to be broken and it is not for an interest arbitrator to impose changes because they are "good ideas", these proposals are rejected.[153]

13. Other Economic Proposals By The Union

There are other economic proposals made by the Union not addressed above.

A. The Parties' Final Offers

The Union seeks a duty disability pay requirement that employees receive 100% of their salary for the first year of a disability due to occupational disease or injury[154]; step compression for Police Sergeants[155]; and changing the rank differential between Police Officers and Sergeants.[156]

The County opposes these proposals.

B. Discussion

The burden rests with the Union on these proposals. Given that I have accepted the Union's wage offer and rejected the County's attempt to change health care which could have effectively reduced the wage offer and for reasons other economic changes sought by the Union have been rejected, the Union

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[153] The County also made a proposal for personal time accrual to include in all of the Agreements the precise number of hours per pay period accrued for personal days and the County states that "AFSCME has not expressed opposition to adding the precise accrual rate to the Agreements." County Post-Hearing Brief at 29. Obviously, the parties are free add that language if they agree to do so. However, for reasons stated with respect to changes, absent agreement of the parties, I will not require that the parties to do so.

[154] Union Final Offer dated June 1, 2010, Proposal No. 3; Union Post-Hearing Brief at 14.

[155] Union Final Offer dated June 1, 2010, Proposal No. 20; Union Post-Hearing Brief at 16-17.

[156] Union Final Offer dated June 1, 2010, Proposal No. 14; Union Post-Hearing Brief at 18.

cannot justify these additional economic items, particularly in this economy. These proposals are rejected.

14. Other Non-Economic Proposals By The Union

There is another proposal (non-economic) made by the Union not addressed above.

A. The Parties' Final Offers

The Union seeks a "me too" provision for certain items from the universal bargaining table.[157]

The County opposes this proposals.

B. Discussion

The burden rests with the Union. The Union argues that it should have a "me too" provision for benefits obtained in universal bargaining with the County for other bargaining units because of protracted negotiations and because, in the past, interest arbitrations have followed negotiations in other units while this year interest arbitration leads the way.

I am only addressing this proceeding. I see no reason to impose a "me too" provision in these Agreements for items subsequently achieved in the parties' universal negotiations in other units. Following the universal negotiations, the parties are free to mutually add (or subtract) items decided in this award. But the heavy burden to require such a provision as a "me too" clause has not been met for me to add that clause.

VIII. CAVEATS

As discussed throughout this award, the rules and parameters which applied prior to the 2008 economic crash do not help much in setting terms of

[157] Union Final Offer dated June 1, 2010, Proposal No. 4; Union Post-Hearing Brief at 18.

contracts coming out of this recession with an uncertain hoped-for recovery — particularly in final offer interest arbitrations, as here, where the arbitrator has no flexibility and is tied to selection of one of two proposed offers on economic issues and where terms must be set for periods years in advance when no one really knows where the economy is going. Nevertheless, terms and conditions for the Agreements in this case must be established — and that has been done.

Given the uncertainty of the present economic situation, I have imposed caveats in other cases which I find are appropriate for this case as well. *See* e.g., *County of Rock Island, supra* at 18-19:

> While the wage rates have now been established, I return to the fact that these are most unique and difficult economic times for public employers, employees, union and taxpayers. Everyone is reeling from these times — the only difference is in degree. Until the economic waters calm, parties in collective bargaining relationships have to be able to react to these conditions without future repercussions. Therefore, as I have done in other cases decided in this economy, the result in this case must be on a non-precedential basis. That means that the methodology and analysis I used to set the wage rates and the ultimate rankings with respect to other communities which may flow from this award (either up or down) shall not be prejudicial to any position taken or argument made by either party for future negotiations or interest arbitration proceedings. These are most difficult economic times and no party should be prejudiced or allowed to take advantage of these times for negotiation or arbitration of future contracts.

Therefore, because of the present state of economic affairs, this award issues on a non-precedential basis. Because of the economy and the uncertainty of what lies ahead, neither party should be prejudiced by any findings in this award for future negotiations or interest arbitrations. In future negotiations and interest arbitrations, the parties shall be free to raise any issue rejected or withdrawn during the course of these proceedings and not have this award stand as a bar to such proposals. In my opinion, until the economic waters calm, there is no other way to approach these kinds of disputes.

IX. RETROACTIVITY AND PRIOR AGREEMENTS

Economic terms awarded in this matter are retroactive. Any tentative agreements reached by the parties during negotiations are incorporated into this award.

X. RETENTION OF JURISDICTION

This matter is now remanded to the parties for the drafting of the Agreements consistent with this award. With the consent of the parties, the undersigned will retain jurisdiction to resolve disputes, if any, which may arise concerning formulation of the contract terms for the Agreements.

XI. CONCLUSION AND AWARD

Based on the above, the following award is entered:

1. Wages

Union proposal adopted:

Effective Date	Increase
12/01/08	2.00%
12/01/09	1.50%
12/01/10	2.00%
12/01/11	2.00%
06/01/12	1.00%
Total	8.50%

2. Health Care

Union proposal adopted:

No change.

3. Uniform Allowance

County/Sheriff proposal adopted:

No change.

4. Scheduling and removal of the arbitration provisions in Section 3.2 of the Police Officers Agreement.

Union proposal adopted:

No change.

5. Affidavits in Disciplinary Investigations

County/Sheriff proposal adopted:

No change.

6. Acting Up Pay for Correctional Lieutenants

County/Sheriff proposal adopted:

No change.

7. De- and Re-Deputization

County/Sheriff proposal adopted:

No change.

8. Timelines for Investigations

County/Sheriff proposal adopted:

No change.

9. Implementation of Discipline

County/Sheriff proposal adopted:

No change.

10. Rank Differential for Correctional Lieutenants

County/Sheriff proposal adopted:

No change.

11. Prevention of receipt of insurance opt-out payments

Union proposal adopted:

No change.

12. Requirement to use all available benefit time such as sick leave, vacation. Personal days and compensatory time off before using Family Medical Leave Act time

Union proposal adopted:

No change.

13. Overtime pyramiding under the Local 2264 Agreement

Union proposal adopted:

No change.

14. Residency

Union proposal adopted:

No change.

15. Zipper clause

Union proposal adopted:

No change.

16. Mandatory retirement for all employees at age 65

Union proposal adopted:

No change.

17. Requirement for an annual fitness and agility test

Union proposal adopted:

No change.

18. Bidding restrictions in Local 3692 Agreement

Union proposal adopted:

No change.

19. Time limits for arbitration demands under Section 12.10 of the Local 2264 Agreement

Union proposal adopted:

No change.

20. Duty disability pay requirement that employees receive 100% of their salary for the first year of a disability due to occupational disease or injury

County/Sheriff proposal adopted:

No change.

21. Step compression for Police Sergeants

County/Sheriff proposal adopted:

No change.

22. Changing the rank differential between Police Officers and Sergeants.

County/Sheriff proposal adopted:

No change.

23. A “me too” provision for certain items from the universal bargaining table.

County/Sheriff proposal adopted:

No change.

24. Other issues summarily resolved:

As decided on May 17, 2010.

Edwin H. Benn
Arbitrator

Dated: September 29, 2010